

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.

08CV2755

Plaintiff,

vs.

June 24, 2015
8:30 A.M.

SAP AMERICA, INC., ET AL.,

Volume 8

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE
AND A JURY

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2 WEDNESDAY, JUNE 24, 2015, 8:31 A.M.

3 (Proceedings resumed in presence of the jury as follows:)

4 THE COURT: Good morning, ladies and
08:32:21 5 gentlemen.

6 You may continue.

7 MR. STAR: Your Honor, just one brief
8 issue.9 THE COURT: Mr. Reidl, you can go ahead and
08:32:29 10 take the witness stand.

11 (Side-bar conference had off the record).

12 DIRECT EXAMINATION OF OTTO REIDL (RESUMED)

13 BY MS. LUARDE:

14 Q. Good morning, Mr. Reidl.

08:33:34 15 A. Good morning.

16 Q. Can you hear me okay?

17 A. Yes.

18 Q. Okay. So, Mr. Reidl, when we left off yesterday,
19 you'll recall that we were getting into the point where
08:33:50 20 we were talking about some independent contractors for
21 the company.

22 Do you recall that?

23 A. Yes.

24 Q. Okay. And, Mr. Reidl, can you tell me, does Hodell
08:34:01 25 actually have contracts with some of these independent

1 sales representatives?

2 A. Yes, we do.

3 Q. Okay.

4 MS. LUARDE: Your Honor, may I approach?

08:34:10 5 THE COURT: Sure.

6 MS. LUARDE: Thank you.

7 BY MS. LUARDE:

8 Q. And, Mr. Reidl, I've handed you a copy of what's
9 called a domestic sales representation agreement.

08:34:31 10 Do you see that?

11 A. Yes, I do.

12 MR. STAR: Your Honor, I'm going to object
13 to this.

14 They did not have this on their exhibit
08:34:38 15 list. We did not offer this as an exhibit.

16 THE COURT: Didn't you cross-examine the
17 witness on this?

18 MR. STAR: We did not introduce the
19 document.

08:34:46 20 THE COURT: Okay. Overruled.

21 MS. LUARDE: Thank you, Your Honor.

22 BY MS. LUARDE:

23 Q. Mr. Reidl, could you tell me the purpose of these
24 agreements?

08:34:54 25 A. This defines the relationship between our company

1 and the sales representative.

2 Q. And are all of the agreements with, I think you
3 said you had five or six --

4 A. Five.

08:35:07 5 Q. -- five independent sales representatives. Are all
6 of these agreements the same?

7 A. Yes.

8 Q. Okay. And who at the company is responsible for
9 having these signed?

08:35:18 10 A. The president or the sales manager.

11 Q. Okay. So your son, Kevin Reidl, or the sales
12 manager in charge?

13 A. For the particular warehouse.

14 Q. Okay. And this agreement -- bear with me just one
08:35:46 15 moment, please.

16 If you'd turn to Paragraph 13 of this
17 contract.

18 A. Okay.

19 Q. How is the relationship described or defined
08:36:10 20 between Hodell and these independent sales
21 representatives?

22 A. It states that the rep agrees that in all matters
23 relating to this agreement, he shall be acting as an
24 independent contractor; that neither rep nor employees of
08:36:29 25 rep are employees of Hodell-Natco within the meaning or

1 application of any federal or state law.

2 And the rep hereby agrees to assume all
3 liabilities or obligations imposed by one or more of such
4 laws with respect to employees of the rep in the
08:36:46 5 performance of this agreement.

6 Q. And what is the general purpose of that paragraph?

7 A. To indicate that the rep does not have the
8 authority to state that he is an employee of
9 Hodell-Natco.

08:37:08 10 Q. And, in fact, if you'd turn to Paragraph 14 of this
11 document, this paragraph actually talks about the use of
12 Hodell-Natco's name, is that correct?

13 A. That is correct.

14 Q. And could you read the first --

08:37:29 15 MR. STAR: Objection, Your Honor. This
16 is -- again, this is not --

17 THE COURT: Overruled.

18 Q. And could you read the first sentence for me,
19 please?

08:37:37 20 A. Yes. "A rep shall not use the name of Hodell-Natco
21 or any abbreviation or variation of it on his stationery,
22 business cards, advertisements, telephone directory
23 listings, or any other written or printed material except
24 with the prior written approval of Hodell-Natco."

08:37:57 25 Q. And why do you have that particular provision in

1 this agreement?

2 A. That, first of all, that he is not an employee of
3 the company.

4 Second, he is not authorized to make any
08:38:15 5 representations other than what he has in the documents.

6 Q. And he's not allowed to say on his stationery that
7 he's Hodell, is that correct?

8 A. That is correct.

9 Q. And, Mr. Reidl, in your tenure with Hodell-Natco,
08:38:32 10 have you ever had an instance where an outside sales
11 representative made a representation to a customer --

12 MR. STAR: Objection. Relevance.

13 THE COURT: Objection sustained.

14 MS. LUARDE: Okay.

08:38:47 15 THE COURT: Let's stick to this case.

16 BY MS. LUARDE:

17 Q. Mr. Reidl, I want to shift gears now and talk about
18 the computer software, the ERP system at Hodell.

19 Could you tell the jury how the computer
08:39:04 20 ERP systems are used at Hodell?

21 A. We use our computer system to handle all office and
22 warehouse functions that have been automated by the
23 system.

24 We enter orders via EDI, electronic data
08:39:31 25 interchange, or manually type into the system.

1 We automatically print sales order -- sales
2 orders or load them down to the warehouse. The automated
3 warehouse management system directs the order picker to
4 pick the product for that order. And he prepares it for
08:39:53 5 shipment.

6 Q. So we've heard --

7 A. We invoice automatically.

8 Q. Okay.

9 A. And download information from our bank to update
08:40:03 10 our cash receipts, invoice records.

11 Q. So we've heard the ERP system's being described as
12 sort of the backbone for the company.

13 Is that a fair assessment?

14 A. The ERP system is vital to our operations, the
08:40:28 15 efficient operation of our --

16 Q. So what happens if it doesn't work?

17 A. Currently it would be very difficult to do
18 everything manually, but that would have to be the
19 fallback position until the system comes back up.

08:40:46 20 Q. Okay. And, in fact, we've heard testimony that
21 Hodell-Natco replaced its old system, the FACTS system,
22 with the Business One system, is that correct?

23 A. That is correct.

24 Q. Can you tell the jury a little bit about the FACTS
08:41:07 25 system?

1 A. The FACTS system is a software package that we had
2 been using about 14 years.

3 It is what is called a character-based
4 system or also labeled a Legacy System. Basically you
08:41:29 5 didn't use a mouse with it. It wasn't Windows-friendly,
6 and the warehouse management system had to be integrated
7 with that. That was a separate package.

8 Q. And your experience using FACTS, can you tell us
9 the vendor that you used to purchase that system?

08:41:53 10 A. Yes. We purchased the software package from a
11 company called Soft Tech in Chicago. About nine or
12 twelve months after we purchased the software or we
13 implemented the software, Soft Tech went out of business.

14 At that time, there was another gentleman
08:42:22 15 whose name I don't recall at the moment, I think his
16 first name was Art, who assisted us for approximately a
17 year; at which point, Dale Van Leeuwen made contact with
18 us, and from that point on, we worked with Dale
19 Van Leeuwen for the next 12, 13 years.

20 Q. And --

21 A. But he was familiar with us. He worked for Soft
22 Tech.

23 Q. And Dale Van Leeuwen actually owned IBIS, is that
24 correct?

08:43:05 25 A. I'm sorry. Could you ask that again?

1 Q. Yes. Dale Van Leeuwen owned IBIS?

2 A. That is correct.

3 Q. And could you, since we're talking about
4 Mr. Van Leeuwen, could you describe Hodell's relationship
08:43:23 5 with IBIS and Mr. Van Leeuwen?

6 A. Mr. Van Leeuwen assisted us in the customization of
7 the FACTS package over time to provide a vertical
8 integration for our market.

9 He worked with us to adapt Radio Beacon,
08:43:57 10 which is a warehouse management system using scanners,
11 handhelds. And he worked with us through
12 the -- basically when we left the system.

13 Q. And did you trust Mr. Van Leeuwen?

14 A. I had an extremely close working relationship with
08:44:28 15 him.

16 In my experience with him, he never once
17 lied to me.

18 Q. And there were times, though, and you had, I think
19 you described, at least a 15-year relationship, is that
08:44:41 20 correct?

21 A. I'm sorry?

22 Q. You had at least a 15-year relationship with
23 Mr. Van Leeuwen?

24 A. That's fairly close.

08:44:48 25 Q. Okay. And during that period of time, you had a

1 couple of disagreements with him, is that correct?

2 A. That is correct.

3 Q. And during the course of this trial, you've seen
4 e-mail traffic presented to Mr. Van Leeuwen stating that
08:45:08 5 you threatened to sue IBIS.

6 Do you recall that?

7 A. Yes, I do.

8 Q. Could you tell the jury what that was all about?

9 A. That was -- reflected our complaints concerning the
08:45:24 10 progress on the Radio Beacon integration and the speed of
11 progress involved, the lack of speed of progress.

12 Q. And, in fact, did that cause you or that
13 disagreement, did that cause you or Hodell to lose faith
14 in Mr. Van Leeuwen?

15 A. No.

16 Q. And, in fact, you never did sue Mr. Van Leeuwen
17 over the FACTS or Radio Beacon system, did you?

18 A. That is correct.

19 Q. And, in fact, is this the first lawsuit that you
08:46:00 20 filed?

21 A. Correct.

22 Q. And this is the first time you've testified then in
23 Federal Court, correct?

24 A. That is correct.

08:46:12 25 Q. And at some point in time, you made the decision to

1 switch from the FACTS system, correct?

2 A. Correct.

3 Q. Why is that?

4 A. We needed a more user-friendly package that could
08:46:30 5 enable us to grow the company.

6 We were starting to maximize the
7 capabilities of FACTS for our company. As I stated
8 earlier, there was no interaction with modern software,
9 such as Microsoft Office or Excel. If you wanted to
08:46:53 10 download data, you had to ask the IT person to extract
11 that data from the system and upload it into a
12 spreadsheet or a printout.

13 Furthermore, we wanted to fully automate
14 our warehouses, and we needed a package that could assist
08:47:15 15 our growth plans.

16 Prior to the implementation of SAP, we had
17 been growing at a -- just short of 14% per year
18 compounded over 10 years, so we needed a system that
19 could adapt to that number of users that it would
08:47:36 20 involve.

21 Q. Okay. And, Mr. Reidl, could you tell me then how
22 you became familiar with SAP's Business One software?

23 A. Yes. About mid year 2003, I don't remember the
24 precise month, I attended an IT or Information Technology
08:48:03 25 trade show in Cleveland, where I learned about a

1 competing product called Navision or Navision, I'm not
2 sure of the pronunciation, and I learned about SAP
3 Business One.

4 I provided my business card to a number of
08:48:29 5 vendors. I don't know if AmEx got a card from me, but
6 shortly after that trade show, I received a mailing from
7 AmEx, and I may have filled out that card to send back to
8 AmEx.

9 Q. Okay. And just going back a little bit to the
08:48:52 10 trade show, you actually looked at a variety of different
11 potential ERP systems during that process, correct?

12 A. Correct.

13 Q. And what were a couple of the other systems you had
14 looked at at that time?

08:49:06 15 A. We had looked at Profit 21, which is what we are
16 currently running on.

17 We looked at Computer Insights.

18 Q. And --

19 A. We looked at, as part of this process, SAP Business
08:49:34 20 One.

21 We had a couple of others.

22 Q. Okay. Mr. Reidl, I'd like to direct you to Exhibit
23 314. And I have your binder here?

24 MS. LUARDE: Your Honor, if I may approach.

08:49:52 25 THE COURT: You may.

1 MS. LUARDE: Thank you.

2 BY MS. LUARDE:

3 Q. Mr. Reidl, I know the jury has seen this exhibit
4 before, but could you identify this document for us?

08:50:20 5 A. Yes. It's a document describing SAP Business One,
6 entitled "SAP Business One Brief."

7 Q. And, in fact, when did you receive this document,
8 Mr. Reidl?

9 A. In 2003.

08:50:46 10 MS. LUARDE: And, Kim, could you turn to
11 Page 4, please?

12 Q. And you'll see, Mr. Reidl, on Page 4 of this
13 document, could you tell me who published this document?

14 A. SAP AG.

08:51:06 15 Q. Okay. Mr. Reidl, when you received this document,
16 the Business One Brief, did you read this document?

17 A. Yes, I did.

18 Q. And, in fact, does this document say anything that
19 you relied on in selecting Business One?

08:51:26 20 A. Yes, it does.

21 First of all, we were looking at a system
22 that could support growth, and the document states it
23 supports dynamic growth. It is easy to customize, to
24 adapt to the industry, and it promised productivity
08:51:53 25 improvement, efficiency in the use of resources, people

1 and capital resources, and it had the backing of the
2 world's largest ERP provider or one of the world's
3 largest. It stated that.

4 Q. And, Mr. Reidl, in fact, if you'd turn to Page 2 of
08:52:21 5 this document. That would be 314.2, Kim.

6 Some of these statements that you just
7 described, the first one on 314.2, the first paragraph,
8 do you see that, Mr. Reidl?

9 A. Yes, I do.

08:52:40 10 Q. Is that one of the statements that you relied upon?

11 A. Yes.

12 Q. And, in fact, this states, "The solution helps
13 emerging businesses, from those with 10 to several
14 hundred employees, to streamline their operational and
08:52:55 15 managerial processes."

16 That, was that important to Hodell?

17 A. Absolutely.

18 Q. And why? Why was that important?

19 A. Because we had plans to continue our growth path,
08:53:09 20 which meant we would be expanding our number of users
21 significantly over the expected 10-year life. When we
22 started to investigate alternatives, that was our target.
23 It should handle, be able to handle our requirements for
24 the next 10 years.

08:53:33 25 Q. And, in fact, Hodell historically had grown through

1 acquisition, is that correct?

2 A. That is correct. We historically, a little over
3 two-thirds, close to three-quarters of our growth was
4 from the addition of market share through acquisition.

08:53:49 5 The balance was the core business growth,
6 the underlying business.

7 Q. And, in fact, this states that Business One --

8 MR. STAR: Objection. Leading.

9 THE COURT: Overruled.

08:54:03 10 Q. -- that Business One helps emerging businesses from
11 10 to several hundred employees.

12 Did you take the several hundred employees
13 to mean users or employees or what did you think that
14 meant?

08:54:16 15 A. First of all, several hundred, the definition of
16 several in the dictionary I looked up is more than two or
17 three. So I picture this to be 300.

18 And since employees, who do not use a
19 system, have no bearing on describing the capacity of the
08:54:37 20 system, I assumed that was users.

21 Q. And when you read this document, any -- any other
22 page in this document, does it say "Users," like 10
23 users?

24 A. Not to my recollection.

08:54:58 25 Q. Thank you.

1 Did Hodell actually -- did SAP Business One
2 actually help Hodell grow and streamline your operational
3 and managerial processes?

4 A. No. Quite the contrary.

08:55:14 5 Q. Mr. Reidl, I'd like to direct your attention to
6 Page 3 of this document. And I believe in the bottom
7 left-hand corner you had earlier referenced Business
8 One's expertise, correct?

9 A. Correct.

08:55:40 10 Q. And why was that important to Hodell?

11 A. First of all, it's delivered through a network of
12 highly qualified channel partners who understand the
13 specific challenges facing small and midsize businesses.

14 Q. And it was important to you to have SAP's backing,
15 and why was that?

16 MR. STAR: Your Honor, objection.

17 THE COURT: Overruled.

18 A. In the implementation of software, there are often
19 a time frame where not everything runs smoothly, and this
08:56:23 20 document further stated that it had -- when you buy this,
21 you're dealing with an organization that has, I think, 30
22 years of experience in this area.

23 Q. And, in fact, Kim, if you're on 314.3, the second
24 column, the second full paragraph. There you go.

08:57:01 25 And, Mr. Reidl, is that the portion you're

1 referring to?

2 A. Pardon me? Could you repeat that, please?

3 Q. Yes. You just mentioned 30 years experience.

4 A. Yes.

08:57:12 5 Q. Is this the portion of the document you were
6 referring to?

7 A. Yes.

8 Q. And there were also other portions of this document
9 that were important to Hodell, including -- Kim, on
08:57:32 10 314.3, the first paragraph in the left-hand column.

11 MR. STAR: Objection. Counsel is
12 testifying.

13 THE COURT: Overruled.

14 Q. And I believe you also mentioned this when we asked
08:57:45 15 about why this was important to you.

16 A. Yes. And this talks about growth and improved
17 profitability, better bottom line; short implementation
18 cycle, which did not happen.

19 Q. And did you rely on all of this information in
08:58:13 20 making your selection?

21 A. Yes.

22 Q. And, Mr. Reidl, if I could direct you to Page 5 of
23 Exhibit 314, I believe it's actually -- it's a separate
24 document, although it has the same exhibit number.

08:58:37 25 A. Yes. Okay.

1 Q. And could you tell the jury what this document is?

2 A. This is a document, it's labeled "SAP Solution
3 Brief," and it deals with SAP Business One.

4 Q. And did you rely on the content of this document in
08:58:57 5 deciding whether to purchase SAP Business One?

6 A. Yes.

7 Q. And what on this first page was important to you in
8 making your decision?

9 A. As I mentioned before, first, ability to grow, to
08:59:19 10 have an easily customizable system to provide vertical
11 add-ons for our industry; five to 500 employee
12 capability; the backing of the world's largest or one of
13 the world's largest ERP providers; real-time access to
14 information; improved employee productivity.

08:59:50 15 A lot of the things that were discussed in
16 the earlier document, also.

17 Q. And, in fact, did any of these things actually
18 occur at Hodell?

19 A. No.

09:00:07 20 Q. Kim, if you could turn to the next page, please.

21 And, Mr. Reidl, you relied on information
22 contained on this page as well, correct?

23 A. Correct.

24 Q. And, in fact, one of the headings is "Support for
09:00:22 25 Growth," and you just testified growth is important for

1 Hodell?

2 A. Correct.

3 Q. And, Kim, if you could turn to Page 7 of this
4 document, please.

09:00:35 5 And you also relied on portions of Page 7,
6 correct?

7 A. Correct. Again, the highly -- it's delivered
8 through a network of highly qualified channel partners
9 and supported by SAP's global resources.

09:01:03 10 Q. And it states there, "You receive first-class
11 service and support," correct?

12 A. Correct.

13 Q. Did Hodell actually receive first-class service and
14 support from SAP?

09:01:16 15 A. No.

16 Q. And the channel partners referred to here, the
17 channel partner you worked with was actually LSi and
18 IBIS, correct?

19 A. Correct.

09:01:29 20 Q. And to your knowledge, could you have actually
21 purchased SAP Business One directly from SAP?

22 A. It's my understanding that this product was
23 marketed exclusively through channel partners.

24 Q. And, Kim, if you could turn to Page 8 of this
09:01:52 25 document, please.

1 And at the bottom, Mr. Reidl, I know the
2 print's really small, but I think it states that it's a
3 2003 SAP AG document. Do you see that?

4 A. That's correct.

09:02:14 5 Q. And when did you -- you received these materials at
6 the trade show, is that correct?

7 A. No. I -- this one came from Dale Van Leeuwen.

8 Q. And that came before you actually made the decision
9 to purchase Business One?

09:02:37 10 A. That's correct. It was part of the documentation
11 prior to further investigation.

12 Q. Okay. So, Mr. Reidl, we discussed the trade show
13 that was in Cleveland in 2003, and I believe you
14 testified you received some information from AmEx, is
09:03:01 15 that correct?

16 A. Yes.

17 Q. Mr. Reidl, could I turn you to Exhibit 617?

18 A. Okay.

19 Q. And could you identify this document for the jury?

09:03:30 20 A. Yes. This is an e-mail I received from Heather
21 Devereaux with the subject being SAP Business One -- the
22 American Express edition, and it had three attached
23 documents, and she was sending this to me on behalf of a
24 Christina Alagna, I'm not sure I can pronounce that
09:04:00 25 correctly, from the American Express tax and business

1 services.

2 I never met her or talked to her,

3 Christina.

4 Q. And Christina's name is at the bottom here, right?

09:04:10 5 A. Correct.

6 Q. And if you could turn to Page 2, Kim.

7 And, I'm sorry, Kim, could you flip back to
8 the first page?

9 And the date of this document, Mr. Reidl,

09:04:32 10 what is the date of the document?

11 A. October 1st, 2003.

12 Q. And on Page 2, Kim, is this one of the attachments
13 that was sent in that e-mail?

14 A. Yes, it was.

09:04:58 15 Q. And did you read these documents when you received
16 them?

17 A. Yes.

18 Q. And did you rely on these documents when making a
19 decision on whether to use SAP Business One at Hodell?

09:05:14 20 A. Yes, it caused me to proceed further in the
21 investigation.

22 Q. Okay. And, in fact, on Page 2 of this document, it
23 states, "The American Express Edition," but in the
24 right-hand, there's actually an SAP logo.

09:05:35 25 Do you see that?

1 A. Yes.

2 Q. And, Mr. Reidl, in relying on this, if you'd turn
3 to Page 617.6, did you rely on information on Page 6 of
4 this document in making your decision?

09:05:54 5 A. Yes, I did.

6 Q. And could you tell us what that is?

7 A. Yes. "Among others, the SAP Business One solution
8 effectively supports companies with as low as 10 and as
9 many as several hundred employees."

09:06:15 10 Q. And again, scalability was important for Hodell,
11 correct?

12 A. Correct.

13 Q. Kim, could you give us Exhibit 618, please?

14 And could you identify Exhibit 618 for us,

09:06:39 15 Mr. Reidl?

16 A. Yes. It is entitled SAP Business One Whitepaper.

17 Q. And what is the date of that document? It's in the
18 upper left-hand corner.

19 A. August, 2002.

09:06:57 20 Q. And at the bottom, it states -- it has an SAP logo.
21 Do you see that?

22 A. Yes, I do.

23 Q. SAP America?

24 A. Correct.

09:07:07 25 Q. Kim, could you turn to Page 2, please?

1 And, Mr. Reidl, the front page states SAP
2 America, but do you see at the bottom?

3 A. It says "2002 SAP AG."

4 Q. Okay. And where did you receive this document or
09:07:33 5 who did you receive this document from?

6 A. From American Express.

7 Q. Was there a specific person, do you recall?

8 A. I received the document on several occasions. The
9 first one was from Heather Devereaux and the second time,
09:07:51 10 it was in an e-mail attachment from a Penny Vitantonio of
11 American -- AmEx.

12 Q. And again, you read this document when you received
13 it, correct?

14 A. Yes, I did.

09:08:11 15 Q. And, Kim, could you go to 618.4, please?

16 And this Whitepaper, actually this is
17 Page 618.4, at the bottom I think it states it's Page 4
18 of 30.

19 Do you see that?

20 A. Correct.

21 Q. So this is a 30-page document, right?

22 A. Yes, it is.

23 Q. And on the first paragraph, did you rely on
24 information contained in the first -- under the first
09:08:56 25 heading?

1 A. Yes. 30-year -- SAP -- "30 years in the business
2 of helping businesses grow."

3 Q. And it talks there, could you read the second line,
4 Mr. Reidl?

09:09:10 5 A. Yes. "12 million users, over 60,000 installations,
6 1,500 partners, 23 industry solutions."

7 Q. And under "Experience, Knowledge, and Technology
8 For Maximizing Business," do you see that, Mr. Reidl?

9 A. Yes.

09:09:31 10 Q. And what are they saying there?

11 A. Yes. First of all, the technology to maximize a
12 business means improving the efficiency of the business.

13 They've leveraged their extensive
14 experience to deliver mySAP Business Suite, one other SAP
09:10:03 15 product. It allows employees and customers to work
16 together successfully anywhere, anytime. Flexible.
17 Supporting databases.

18 Q. And you relied on these statements in making your
19 decision, correct?

09:10:22 20 A. Yes.

21 Q. Kim, could you turn to the next page, please? And
22 here it states "Fast implementation," correct?

23 A. Correct.

24 Q. And that would be important to Hodell as well,
09:10:53 25 correct?

1 A. Yes. We wanted to minimize the period of
2 implementation to get the benefits of the purported
3 productivity and improved efficiency.

4 Q. And, Mr. Reidl, I'm going to have Kim flip
5 to -- bear with me one second -- Page 618.7, please, Kim.

8 A. Yes. It says, "To secure critical business and
9 system processes, a robust MS-SQL 2000 database is used.
0 It supports an unlimited number of simultaneous user
.1 transactions."

12 Q. If you could continue. Mr. Reidl, if you could
13 read the remainder of that.

14 A. Okay. "In addition, its scalability provides for
15 expansion of business activities while simultaneously
16 securing and controlling all business processes."

17 Q. And, Mr. Reidl, you relied on this statement in
18 making your decision to purchase Business One, correct?

19 A. Yes. Scalability, which I define as growth
20 capability, is vital to this decision. It's one of the
21 major reasons we decided to leave FACTS.

22 Q. Because your business was growing, correct?

23 A. Correct.

Q. And when you see the phrase, "Unlimited number of simultaneous user transactions," is that what you were

1 referring to with regards to growth?

2 A. Correct.

3 Q. And, Kim, if you could turn to Page 18 of this

4 document, under technology, the heading "Technology,"

09:13:54 5 Mr. Reidl.

6 A. Okay. You want me to read that?

7 Q. Sure.

8 A. Okay. Again, "To secure critical business and
9 system processes, a robust MS-SQL 2000 database is used.

09:14:16 10 It supports an unlimited number of simultaneous user
11 transactions."

12 Excuse me.

13 "In addition, its scalability provides for
14 expansion of business activities while simultaneously
09:14:31 15 securing and controlling all business processes."

16 That's again addressing scalability as
17 growth.

18 Q. So this statement actually appears twice in this
19 Whitepaper?

09:14:47 20 A. That's correct.

21 Q. And was it your opinion that Business One could
22 support a company the size of Hodell which had immediate
23 needs for 120 user licenses?

24 MR. STAR: Objection.

09:15:00 25 THE COURT: Overruled.

1 A. When we were making this -- the decision to enter?

2 Q. Yes.

3 A. Yes.

4 Q. And was this true?

09:15:10 5 A. No.

6 Q. When you received these documents in 2003, did you
7 speak with anyone at SAP at that point in time?

8 A. I -- I spoke with the channel partner.

9 Q. And which channel partner was that at that time?

09:15:34 10 A. At that time, it was AmEx.

11 Q. And why didn't you speak with SAP?

12 A. Because the product is marketed exclusively through
13 channel partners.

14 Q. And did you believe AmEx was speaking on behalf of
09:15:58 15 SAP?

16 A. I didn't have anybody else to talk to.

17 Q. Did AmEx lead you to believe that they were able to
18 speak on behalf of SAP?

19 A. Yes.

09:16:20 20 Q. How so?

21 A. They represented the product and its capabilities
22 to us.

23 Q. Okay. And you recall that you had a webinar with
24 AmEx, is that correct?

09:16:44 25 A. Correct.

1 Q. And when was that?

2 A. Either late 2003 or early 2004.

3 Q. And can you tell us, tell the jury, what happened
4 during that webinar with AmEx?

09:17:04 5 A. We had a demonstration of the basic American
6 Express SAP Business One product.

7 Q. How does a webinar work?

8 Do you just log into your computer and
9 watch it? Do they come in?

09:17:25 10 Can you tell us a little bit more?

11 A. No, the webinar, I believe, also involved IBM. I'm
12 not positive of that. But it was basically we logged
13 into a -- through a connection over the Internet to a
14 demo package.

09:17:49 15 Q. Okay.

16 A. You know, we were basically seeing the product on
17 the screen.

18 Q. And in addition to the webinar, you also met with
19 AmEx, is that correct?

09:18:01 20 A. That is correct.

21 Q. And can you tell us and tell the jury about meeting
22 with AmEx?

23 A. Yes. In -- in December of '03, if I have the date
24 correct, I met with Penny Vitantonio and another person,
09:18:27 25 I believe his first name was Eric, worth was his last

1 name, that's my spelling. I don't recall the correct
2 last name.

3 And we talked about the -- a host of items,
4 including scalability.

09:18:50 5 Q. Where did this meeting occur, Mr. Reidl?

6 A. At our offices.

7 Q. And so Ms. Vitantonio and another AmEx
8 representative showed up, and you had a conversation,
9 right?

09:19:03 10 A. Correct.

11 Q. And one of the items was related to scalability,
12 you just testified?

13 A. Yes.

14 Q. And did you explain to AmEx Hodell's needs and
09:19:20 15 requirements about the number of users initially and an
16 increase in number? Is that what you were referring to
17 was scalability?

18 A. Yes. I spoke to them about our growth history and
19 our plans for future growth, and I received assurance
09:19:34 20 that it could handle our planned growth in number of
21 users over a 10-year period at 300.

22 Q. And did you talk to them about the size of your
23 inventory?

24 A. I'm sorry?

09:19:51 25 Q. Did you discuss with AmEx the size of your

1 inventory?

2 A. Yes.

3 Q. And did you also discuss with them your database
4 size?

09:20:07 5 A. We filled out, I think they wrote down information
6 that we discussed, the inventory size, number of orders,
7 number of customers, and so forth.

8 Q. Okay.

9 A. The facts that they needed to provide a quote.

09:20:34 10 Q. Did AmEx express any concern at that time about
11 your user size?

12 A. No.

13 Q. Did AmEx ever express any concern about your user
14 size?

09:20:51 15 A. No.

16 Q. In fact, did they express any concern about the
17 other information that you discussed?

18 A. No. They actually ended up giving us a quote.

19 Q. So they never told you that Hodell was too big for
09:21:16 20 Business One?

21 A. No, they did not.

22 Q. So AmEx made a proposal to Business One, is that
23 correct? They provided you with a quote?

24 A. Correct.

09:21:24 25 Q. And can you tell me, if you recall, what that quote

1 was?

2 A. It was \$582,000, as I recall.

3 Q. And what was your response to that, Mr. Reidl?

4 A. That pretty much was outside our range.

09:21:51 5 Q. So it was outside your budget, correct?

6 A. Yes. It -- I said it would have to be somewhere
7 near half that number.

8 Q. Okay. And after that, after you declined this
9 proposal, did you have any further conversations with

09:22:05 10 AmEx?

11 A. Yes.

12 Q. And what were those?

13 A. At the -- just prior to receiving the quote,
14 because of my years of experience with Dale Van Leeuwen,
09:22:28 15 I wanted to get his opinion on a number of the products
16 that we were looking at, including SAP Business One.

17 I specifically mentioned to him Navision
18 and Profit 21, that the Computer Insights and I had
19 learned about SAP Business One. And I asked him to give
09:22:53 20 me an assessment.

21 And at that point he reviewed with me very
22 quickly, on Navision he indicated that Microsoft was
23 buying Navision from, I believe it was a British company,
24 and they were going to change the support arrangement,
09:23:23 25 but he didn't discourage me from looking at Navision

1 further, but he was not very positive.

2 And he agreed that he would take a look at
3 SAP Business One to give us a better sense of the
4 remaining choices.

09:23:43 5 Q. And just so I understand, so you had -- these
6 conversations with Dale and AmEx were going on at the
7 same time, correct?

8 A. Correct.

9 Q. And you had previously made Dale aware that you
09:23:57 10 were looking for a replacement ERP system, is that right?

11 A. Yes. As a matter of fact, we were -- three or four
12 of our executives, myself included, met at Dale's offices
13 to review a product called Take Stock, which was a
14 product by a company called Software Solutions. At that
09:24:29 15 time I believe they were called Aperum, and they were
16 the -- also provided our FACTS package, so this was a
17 movement from the Legacy System to Take Stock, and we
18 evaluated that for almost a week. We actually attended
19 classes and demo, so forth, at the IBIS offices in
09:24:50 20 Chicago.

21 Q. So you conducted, you know, some pretty serious due
22 diligence in selecting your ERP system?

23 A. Yes.

24 MR. STAR: Objection. Leading.

09:25:00 25 THE COURT: Overruled.

1 A. I spent several days in Yardley, PA at the Profit
2 21 headquarters.

3 I also went to Atlanta at the Software
4 Solutions headquarters to review the Take Stock at their
09:25:22 5 facility.

6 We spent two days along with one of their
7 IT people in Chicago, Illinois at Computer Insights to
8 review their product.

9 And at the end, the products that survived
09:25:40 10 were P21, Computer Insights, in that order, but we were
11 still trying to learn more about SAP Business One before
12 making a final decision.

13 Q. And Mr. Van Leeuwen helped you obtain additional
14 information on Business One?

09:26:06 15 A. Correct.

16 Q. And eventually -- and could you just explain for
17 me, did Mr. Van Leeuwen then became your -- he became
18 your contact person then on Business One instead of AmEx?

19 A. Actually there was a joint conference call with
09:26:26 20 AmEx, and gradually AmEx decided that after discussing
21 our requirements with Dale Van Leeuwen, that they would
22 have him work on the vertical integration and come up
23 with a joint proposal, but they actually then stepped out
24 of the picture and IBIS was the one that then basically
09:27:03 25 did the rest of the investigation.

1 Q. Okay. And so from a chronological period of time,
2 are we -- where are we? Are we in the late 2003, early
3 2004 time period?

4 A. We're early in 2004.

09:27:29 5 Q. Okay. And so Mr. Van Leeuwen is working with you
6 on Business One, correct?

7 A. Correct.

8 Q. And at some point, though, IBIS and LSi merged, is
9 that your understanding?

09:27:52 10 A. I'm sorry. Could you repeat that?

11 Q. IBIS and LSi merged, is that your understanding?

12 A. They merged sometime after that in April or May of
13 2004.

14 Q. And did you have an understanding of LSi's
09:28:14 15 relationship with SAP?

16 A. Yes. They were a channel partner.

17 Prior to that merger, Dale Van Leeuwen
18 confirmed the user number to me.

19 Q. And when did that occur?

09:28:40 20 A. That was still in '03, and I think it tied to the
21 document that's five to 500 employees.

22 Q. And did you have ongoing discussions with
23 Mr. Van Leeuwen in the '03, '04 time period, about
24 Business One and whether it would work for Hodell?

09:29:03 25 A. Yes.

1 Q. And in addition to the one where you said he just
2 confirmed the user size, what were some of the other
3 things that you discussed?

4 A. Could you repeat that, please?

09:29:15 5 Q. Sure. Other than just the user count and the user
6 size, what were some of the other things that you
7 discussed with Mr. Van Leeuwen?

8 A. The ability for vertical integration into our
9 industry.

09:29:36 10 The availability of a warehouse management
11 system, and again scalability was always on the front
12 burner.

13 And in the case of Dale Van Leeuwen, he
14 knew our entire database requirements. He knew our
09:30:03 15 growth path from 14 years of working with us.

16 Q. And did he confirm that Hodell would be a good fit
17 with Business One?

18 MR. STAR: Objection. Leading.

19 THE COURT: Overruled.

09:30:16 20 A. Yes.

21 Q. And that wasn't just in one discussion but it
22 was --

23 A. No.

24 Q. -- many discussions?

09:30:26 25 A. Many.

1 Q. So what happened then when LSi and IBIS merged?

2 A. Shortly after they merged, Dan Lowery contacted me,
3 and Dale Van Leeuwen confirmed the transaction that he
4 basically sold IBIS to LSi, and that he would be, I
09:31:12 5 think, Chief Operating Officer at LSi/IBIS.

6 Q. Okay.

7 A. And Dan Lowery, in conversations, confirmed his
8 understanding that our user requirements were going to
9 dramatically increase and he assured me that this would
09:31:37 10 suit our needs.

11 Q. And were these conversations with Mr. Lowery and
12 Mr. Van Leeuwen consistent with what you had been told by
13 AmEx?

14 A. Yes.

09:31:55 15 Q. And was it consistent with the literature that you
16 had been provided?

17 A. Yes, it was.

18 Q. And so you had no reason to believe that Business
19 One would not work for you and Hodell, correct?

09:32:14 20 A. Correct. Quite the contrary, it was going to
21 supply all our requirements.

22 Q. Could you tell me how many items does Hodell
23 actually have in its inventory?

24 A. We have in the range of 40,000 base product
09:32:50 25 numbers, which then are extended to a term called SKUs

1 for different pack sizes and configurations.

2 That, that number then is in the range of
3 between 140 and 160,000.

4 Q. So even though you may have 40,000 pieces, because
09:33:14 5 of different packaging you have a larger number of SKUs?

6 A. That is correct.

7 Q. And did Mr. Lowery or Mr. Van Leeuwen ever express
8 any concern about Business One's ability to support
9 Hodell's inventory size while you were evaluating
09:33:35 10 Business One?

11 A. No.

12 Q. Did they ever express concern during the
13 implementation process?

14 A. Implementation, you're referring to when we
09:33:53 15 actually started to operate it?

16 Q. Actually prior to starting to operate it.

17 A. In the testing phase, we started experiencing
18 system problems.

19 Q. Thank you. And we'll get to that in just a few
09:34:11 20 minutes, okay?

21 A. Okay.

22 Q. So ultimately, did you decide that Business One
23 would be a good solution for Hodell?

24 A. Yes.

09:34:29 25 Q. Mr. Reidl, I'd like you to flip to Exhibit 291.

1 A. All right. I don't locate it in this file.

2 Q. You may just have to look at the screen, but if
3 you'd like a hard copy, I can give one to you.

4 A. No, I can read this.

09:35:19 5 Q. Okay. And, Mr. Reidl, you're familiar with this
6 document, correct?

7 A. Pardon me?

8 Q. You're familiar with this document?

9 A. Yes.

09:35:27 10 Q. And could you tell me what this document is?

11 A. This is a development agreement between
12 Hodell-Natco Industries, Inc. and The IBIS Group and
13 LSi-Lowery Systems.

14 Q. And, in fact, I think on Page 2 of this document,
09:35:59 15 is that your signature on the bottom?

16 A. Yes, it is.

17 Q. And in this document -- Kim, if you could turn back
18 to Page 1. And you see in this document, what were you
19 agreeing to do in Paragraph 1?

09:36:29 20 Kim, bullet point one.

21 A. We are basically agreeing to acquire 80 user
22 licenses and enable, by the downpayments and progress
23 payments on their development, to help them fund the
24 development process.

09:37:03 25 Q. So just so I'm clear, you were agreeing to purchase

1 80 Business One user licenses?

2 A. That is correct.

3 Q. And then IBIS and LSi were using those funds to
4 develop In-Flight?

09:37:18 5 A. In addition to their own, yes.

6 Q. Okay. And did you believe you were bound to
7 purchase 80 user licenses through this deal?

8 A. Absolutely. We issued a purchase order and they
9 invoiced us for those licenses with the terms for payment
09:37:39 10 for those outlined on that document.

11 Q. And, Kim, could you turn to Page 2 of this
12 document, Paragraph 4?

13 And could you read that paragraph?

14 A. "In case of default by The IBIS Group or LSi, due
09:38:11 15 to bankruptcy or insolvency, SAP has agreed Hodell-Natco
16 will receive 80 user licenses of SAP Business One from
17 SAP for the balance of payment to SAP of 120,000 users."

18 Q. What does that mean to you, Mr. Reidl?

19 A. That means SAP was aware of the purchase of these
09:38:37 20 80 user licenses, and they had specified the balance,
21 price we would have to pay to receive them.

22 Q. And was that important to you?

23 A. Yes.

24 Q. Why?

09:38:53 25 A. In the event that LSi got into insolvency or could

1 not continue to operate.

2 Q. And we've heard some questioning by Mr. Star to
3 indicate that Hodell was going into business with IBIS
4 and LSi as a developer.

09:39:17 5 Are you in the business of developing
6 software?

7 A. No. This document, IBIS/LSi have the intellectual
8 property for this product. We have zero intellectual
9 property share.

09:39:36 10 Q. Thank you. Mr. Reidl, I'd like to turn you to
11 Exhibit 252, which is a copy of the license agreement.

12 A. 252?

13 Q. Yeah. Kim is going to pull that up for you.

14 A. Okay.

09:40:01 15 Q. I'm not certain that's in your binder.

16 And, Mr. Reidl, you've seen this document
17 before, correct?

18 A. Correct.

19 Q. And could you tell me, how many licenses on
09:40:21 20 December 23rd, 2005, were you purchasing?

21 A. Forty.

22 Q. And that was in addition to the 80 from the earlier
23 document, is that correct?

24 A. Correct.

09:40:32 25 Q. And there's no doubt in your mind you had 120 user

1 licenses when you went live, is that correct?

2 A. Correct.

3 Q. And, Mr. Reidl, I would like to direct your
4 attention to Paragraph 7 of this document.

09:40:55 5 Kim, it's actually on 252.4.

8 A. Yes.

9 Do you want me to read it?

09:41:19 10 Q. Yes, please.

11 A. Okay. "Performance warranty/maintenance.

12 Warranty. SAP warrants that the software will
13 substantially conform to the functional specifications
14 contained in the documentation for six months following
15 delivery."

09:41:38 15 delivery."

16 Q. That's sufficient, Mr. Reidl.

17 This sentence refers to documentation for
18 up to 60 months following delivery.

19 Did you receive
09:41:54 20 signed this license agreement?

21 A. I did not.

22 Q. Okay. Did the SAP product conform to the
23 representations that were made about the product?

24 MR. STAR: Objection. Calls for an expert
09:42:15 25 opinion.

1 THE COURT: Overruled.

2 A. No, they did not.

3 Q. Okay. Thank you.

4 Mr. Reidl, I'd like to turn now to the
09:42:28 5 go-live process on Business One.

6 You recall that Hodell actually went live
7 on SAP Business One, correct?

8 A. Correct.

9 Q. And let me back up just one second.

09:42:47 10 Earlier you referenced having some issues
11 during testing.

12 Why did you decide to go live if you were
13 having some issues with regards to testing?

14 A. The LSi had been working with SAP on the problems
09:43:13 15 we experienced.

16 MR. STAR: Objection.

17 THE COURT: Yeah, objection sustained.

18 Q. Could you just tell us about your knowledge with
19 regards to the testing and your decision to go live, why
09:43:33 20 you decided to go live?

21 A. Yes.

22 LSi assured us that the issues that were
23 remaining can be addressed over the -- during the
24 implementation phase; that they are being narrowed down.

09:43:55 25 Q. Okay. And you relied on LSi, correct?

1 A. Correct.

2 Q. And up to this point in time, you have not had any
3 conversations with anyone from SAP, correct?

4 A. No. We were talking to their channel partners.

09:44:18 5 Q. And when did Hodell-Natco go live on Business One?

6 A. March 7th, I believe, in 2007. It was the
7 beginning of March.

8 Q. And what happened?

9 A. We experienced serious problems, systems locking
09:44:58 10 up, difficulty entering orders, difficulty inquiring on
11 availability of stock, slow response to order entry, and
12 just a myriad of problems.

13 Q. And did that have an impact on employee morale?

14 MR. STAR: Objection. Relevance.

09:45:22 15 THE COURT: Overruled.

16 A. It certainly did.

17 Q. And did it have an impact on your business itself?

18 A. Yes. Our -- our company prides itself on service.
19 Our service deteriorated.

09:45:48 20 Q. How so, how did it deteriorate?

21 A. Pardon me?

22 Q. How did it deteriorate?

23 A. Okay. Part of service is providing a quality
24 product at a competitive price in a timely fashion based
09:46:08 25 upon the expectations that we have trained the customer

1 to expect from us.

2 Our -- we had difficulty delivering on
3 time. We didn't know what inventory we had. We often
4 had to purchase on a short-term basis to try and get the
09:46:38 5 service back up, and then do cycle counts to track down
6 where the problem was.

7 And it increased our cost for service, but
8 we're still behind in terms of our normal level of
9 service.

09:46:55 10 Q. And did that impact your company's reputation?

11 A. Yes, it did.

12 MR. STAR: Objection.

13 THE COURT: Overruled.

14 Q. So did you notify anyone of these problems?

09:47:16 15 A. I personally, yes.

16 Q. Who?

17 A. LSi/IBIS.

18 Q. And were efforts made to resolve the problems that
19 were being experienced?

09:47:32 20 A. I believe they were trying to.

21 Q. So LSi and IBIS were trying to resolve the issues?

22 A. Yes.

23 Q. Can you tell us a little bit about some of the
24 efforts they were undertaking?

09:47:51 25 A. Well, they got SAP involved, and we were hearing

1 about potential patch levels.

2 Q. Okay. And, Mr. Reidl, could you tell us
3 who -- actually, when did you speak with someone from SAP
4 directly?

09:48:22 5 Do you recall the first time?

6 A. I believe the very first time that I spoke with
7 someone at SAP was on April 17th, 2007.

8 Q. Okay. And was that a -- that was a telephone
9 conference?

09:48:43 10 A. Correct.

11 Q. And could you tell us who was on that call?

12 A. On the SAP side, a Dirk Boessmann, Geoff Ashley.
13 From our -- and several other people.

14 From our side, myself and Kevin.

09:49:16 15 Q. Okay.

16 A. And from LSi, Dan Lowery.

17 Q. And, Mr. Reidl, you took notes contemporaneous with
18 that call, correct?

19 A. Yes.

09:49:33 20 Q. Kim, could you put up Exhibit 18, please?

21 And, Mr. Reidl, could you identify this
22 document for me, please?

23 A. Yes. These are handwritten notes that I took
24 during the conference call with Dirk Boessmann in
09:50:07 25 Germany.

1 Q. And the Geoff there, is that Geoff Ashley?

2 A. Yeah, I didn't know it's G-E-O-F, okay, but it's
3 Geoff Ashley.

4 Q. Okay. And what did they tell you, "They being
09:50:36 5 SAP" -- tell you about the problems Hodell was
6 experiencing?

7 A. They indicated that they were working on a patch
8 level that would be released sometime near the end of the
9 month, and further, they would be addressing the locking
09:50:57 10 issues that we were experiencing.

11 Q. And what else did they tell you on this call?

12 A. I asked did we buy the wrong system. That's a yes
13 or no question.

14 Mr. Lowery, prior to asking that question,
09:51:25 15 stated to everyone on the conference call that we were
16 going to -- he listed our data volume, customer base, so
17 forth, and our expectation that we would grow to three to
18 500 users. I don't know if he said three to 500 or just
19 500, and so my question came after that.

20 And Mr. Boessmann said "That is a question
21 you need to address to SAP America, but you're probably
22 near the high end of the system capability."

23 When I hear that, and he just heard that
24 we're going to have 500 users, I'm -- he's referring to
09:52:26 25 at that point.

1 Q. So the next paragraph where you talk about Dirk,
2 that's Dirk Boessmann? This is referring to his comment
3 that he thinks we are at the high end of the system
4 capability?

09:52:41 5 A. Correct.

6 Q. But he didn't say -- he didn't respond to your
7 question directly?

8 A. No. I asked did we buy the wrong system. That
9 clearly is a yes or no question.

09:52:54 10 Q. And the following paragraph discusses a patch,
11 correct?

12 A. Yes.

13 Q. And so this is SAP describing what they intend to
14 do?

09:53:12 15 A. I'm sorry. Could you repeat that?

16 Q. Sure. In that paragraph, is this what SAP stated
17 that it would be doing?

18 A. That's my summation of the understanding of what
19 they would be doing.

09:53:25 20 Q. And what was your -- what was your understanding?

21 A. Well, that they were going to urgently work to the
22 best of their ability on a patch to eliminate the lock,
23 locking problem and the performance issues.

24 Q. At --

09:53:50 25 A. And they would also analyze the bigger question of

1 our system choice.

2 Q. Okay. And in the next paragraph, could you tell us
3 what that means?

4 A. Yeah. My recollection of this is we don't have a
09:54:12 5 system capacity issue in terms of servers, "Although Dirk
6 hinted at dispersed servers as an enhancement."

7 Q. But they didn't tell you that your servers were a
8 problem, correct?

9 A. No.

09:54:27 10 Q. And they didn't tell you point blank that Business
11 One would not work?

12 A. No.

13 Q. For Hodell?

14 A. They did not.

09:54:35 15 Q. And at the very bottom, you write, "SAP is aware
16 that urgency is critical in terms of problem/issue
17 resolution and communication."

18 Do you see that?

19 A. Yes.

09:54:53 20 Q. Is that something you advised SAP about, that it
21 was urgent and critical to get this resolved?

22 A. Yes. And they recognized that during the
23 conversation.

24 Q. Okay. Mr. Reidl, during the course of this trial,
09:55:15 25 you've seen a lot of internal SAP e-mail traffic about

1 this phone call.

2 Do you recall those documents?

3 A. Yes.

4 Q. And, in fact, some of those e-mails pre-date the
5 call. Do you recall that?

6 A. Yes. I think the 15th of April.

7 Q. And, in fact, I think there was some from April
8 12th?

9 A. Or even earlier, yes.

09:55:52 10 Q. I'm not going to put them up in front of you, but I
11 just want to ask you a few questions. Okay?

09:56:08 15 A. Yes. As part of the discovery.

16 Q. Yes. And in that document, Mr. Ziv states,
17 "Someone had sold to the wrong customer which is way
18 above any sane B1 Sweet Spot, 120 users."

Do you recall that statement?

09:56:29 20 A. Yes.

21 Q. Did anyone on April 15th tell you that someone had
22 sold to the wrong customer which is way above any sane B1
23 Sweet Spot, 120 users?

24 A. No.

Q. And you would have liked to have known that on that

1 date, correct?

2 A. Pardon me?

3 Q. Would you have liked to have known that on -- on
4 this call?

09:56:51 5 A. Absolutely. It would have given us a heads-up
6 about what we need to do.

7 Q. In fact, you would have taken some corrective
8 action, is that right?

9 A. Yes.

09:57:05 10 Q. And what would you have done?

11 A. Well, we would have started rapidly evaluating the
12 next alternative to replace SAP Business One.

13 Q. And so in other words, you wouldn't have gone
14 through the next, you know, eight months, correct?

09:57:24 15 A. Yes. Yes.

16 Q. And also in that e-mail, do you recall
17 communications involving Dan Kraus?

18 A. Yes.

19 Q. And Mr. Kraus -- I apologize, give me one second.

09:57:58 20 He writes in this e-mail, "Udi, this
21 customer was sold in 2004 before there was any announced
22 or understood issue."

23 Would you have liked to have known that
24 there was an understood issue on April 15th, 2007?

09:58:19 25 MR. STAR: Objection.

1 THE COURT: Overruled.

2 A. I would have liked to have known that.

3 I'm sorry.

4 THE COURT: That's all right.

09:58:24 5 THE WITNESS: Am I not allowed to answer?

6 THE COURT: It's okay.

7 BY MS. LUARDE:

8 Q. And there were additional e-mails other than
9 Exhibit 69.

09:58:34 10 Do you recall that?

11 A. Yes.

12 Q. And there was a later Udi Ziv e-mail where Mr. Ziv
13 writes, "Someone needs to tell the partner about the
14 Business One Sweet Spot and that an environment of 120
09:58:51 15 users and growing is nowhere near it."

16 Did anyone tell that you on April 15th,
17 2007?

18 A. No, they did not.

19 Q. And again, you would have liked to have known that,
09:59:05 20 correct?

21 A. Absolutely.

22 Q. And again, there is another exhibit, 255, that was
23 dated April 16th, 2007.

24 Do you recall that particular e-mail?

09:59:41 25 A. Who is it from?

1 Q. Yes. This one is actually from Dan Kraus to Rodney
2 Seligmann and Michael Sotnick?

3 A. Yes.

4 Q. And that particular e-mail -- bear with me just one
10:00:20 5 second. I apologize.

6 References known performance issues with
7 SAP Business One.

8 Would you have liked to have known that
9 there were known performance issues with SAP Business
10:00:39 10 One?

11 A. Yes. Preferably before we decided to go with it.

12 Q. And are you familiar with the name Ralf
13 Mehnert-Meland?

14 A. Correct.

10:01:02 15 Q. And are you -- you're also familiar with Paul
16 Killingsworth, correct?

17 A. Yes.

18 Q. And Geoff Ashley, is that correct?

19 A. Yes.

10:01:14 20 Q. And do you recall the e-mail dated April 16th,
21 2007, from Ralf Mehnert-Meland to Michael Sotnick, Daniel
22 Kraus, Geoff Ashley, Paul Killingsworth, Manfred Weiss
23 and Eddy Neveux relating to performance issues at
24 Hodell-Natco?

10:01:34 25 A. Yes.

1 Q. And in particular -- and this is before the
2 call -- Ralf Mehnert-Meland writes, "There are basically
3 two issues relating to performance with SAP Business One.
4 One, performance degrades with SSP add-on products
10:01:58 5 accessing SAP Business One and, two, performance degrades
6 with large data sets. Two, Hodell has both issues."

7 Do you recall that?

8 A. Yes.

9 Q. Would you have liked to have been told that on
10:02:11 10 April 17th, the very next day?

11 A. Yes, I would have.

12 Q. And, in fact, Geoff Ashley was on that phone call,
13 correct?

14 A. Yes, he was.

10:02:20 15 Q. And Mr. Ashley didn't tell you that?

16 A. No, he did not.

17 Q. And, in fact, do you recall the summary e-mail that
18 was prepared by Mr. Ashley? We saw a lot of that
19 yesterday.

20 A. Yes.

21 Q. And do you recall seeing Mr. Ralf Mehnert-Meland's
22 response to that summary e-mail from Mr. Ashley, Exhibit
23 158?

24 I can read it for you, if you'd like.

10:03:12 25 A. Okay.

1 Q. He says, "Geoff, thanks. Right on. All: One item
2 from my end. There is no way SAP Business One will work
3 for this customer."

4 Do you recall that?

10:03:23 5 A. Yes.

6 Q. And did Geoff Ashley call you later that day and
7 tell you there's no way SAP Business One will work for
8 this customer?

9 A. No, he did not, nor did anybody else from SAP.

10:03:42 10 Q. And you would have liked to have known that, right?

11 A. Yes, ma'am.

12 Q. During this period of time, this April time frame,
13 we've seen a lot of e-mail traffic that's internal to
14 SAP, but SAP, what were they telling you at this same
15 period of time?

16 A. That they're working on patches to improve the
17 performance of the system.

18 Q. And when you asked that question on the April 17th
19 call about whether Hodell had purchased the right system,
20 no one called you directly and said "No, you did not"?

21 A. No.

22 Q. Mr. Reidl, I'd like to turn you to Exhibit 247.

23 THE COURT: We'll take our morning recess
24 at this time.

10:04:58 25 MS. LUARDE: Thank you.

1 THE COURT: Okay, folks, we'll take about
2 15 minutes.

3 Keep in mind the admonition.

4 (Jury out)

10:05:06 5 (Recess taken).

6 (Proceedings resumed in presence of the
7 jury as follows:)

8 THE COURT: Okay. Be seated, folks.

9 BY MS. LUARDE:

10:26:30 10 Q. Mr. Reidl, before we broke, we had gone through
11 some questioning about the April 17th, 2007 call.

12 Do you recall that?

13 A. Yes.

14 Q. And I just had a couple of quick follow-up
15 questions on that.

16 You recall there was an e-mail written by
17 Geoff Ashley summarizing the call, and there were
18 multiple responses on that day, correct?

19 A. Correct.

20 Q. And one of the responses that I failed to mention
21 was from Dan Kraus, where he writes, "There is no
22 go-forward path here with Business One."

23 Do you recall that e-mail?

24 A. Yes, I do.

10:27:14 25 While I answer, I want to apologize to

1 everybody. I'm wearing hearing aids. So when I'm asking
2 you to repeat a question, it's because I do have some
3 hearing loss.

4 Q. And I will try to speak more loudly.

10:27:29 5 And so, Mr. Reidl, when Dan Kraus wrote on
6 that same date, "There is no go-forward path here with
7 Business One," and that was April 17th, 2007, Dan Kraus
8 did not call Hodell and tell you that, did he?

9 A. No, he did not.

10:27:47 10 Q. And let me ask you this question, Mr. Reidl: On
11 that call on April 17th, 2007, do you believe that SAP
12 was being honest with Hodell?

13 A. No, I do not because we kept being advised of
14 patches, and I would have liked to have had an answer to
10:28:16 15 my question. I could have taken action eight months
16 sooner.

17 Q. Thank you.

18 And, Mr. Reidl, I'd like to turn you to
19 Exhibit 247. And Page 2 of this document, Mr. Reidl, is
10:28:44 20 actually an e-mail that you had written, and I'll
21 represent to you that the first page, the date on it is
22 April 25th, 2007, which is just a week later, right?

23 A. Correct.

24 Q. So, Mr. Reidl, what are you expressing to Dan
10:29:03 25 Lowery in this e-mail?

1 A. The difficulty we're experiencing as a result of
2 the deteriorating financial performance of the company
3 and the impact it has on our borrowing rate and --

4 Q. Just --

10:29:26 5 A. -- and just generally our operations.

6 Q. So already this is becoming a problem for Hodell,
7 correct?

8 A. Yes.

9 Q. And you're explaining to him in this e-mail all of
10:29:37 10 the issues that you're already seeing with Business One,
11 correct?

12 A. Correct.

13 Q. And this is the impact on Hodell?

14 A. That is correct.

15 Q. And I just want to refer you to a couple of
16 sentences in this document.

17 About five or six lines down, you write,
18 "We are now at the top premium differential."

19 Kim, I don't know if you can find that.

20 It's four lines down.

21 MR. STAR: Your Honor, we would object.

22 This lacks foundation.

23 THE COURT: Overruled.

24 A. In our bank relationship, we have what is called a
10:30:23 25 covenant that expresses the performance we have to

1 achieve to get a certain level of interest charged, and
2 when our performance deteriorates, the interest rate goes
3 up.

4 Q. And of course, you know this because you're the CEO
10:30:42 5 of the company, right?

6 A. Correct.

7 Q. And this is part of your responsibility, correct?

8 A. Yes, it is.

9 Q. And you then write "On interest cost alone, this
10:30:54 10 amounts to a \$55,000 a year penalty."

11 Do you see that?

12 A. Correct.

13 Q. And you go on then to talk about your loan officer.
14 What was going on with National City Bank?

10:31:07 15 A. I had to start reporting monthly on my estimate of
16 the impact on the performance of the company of the
17 software implementation, and requirement to spell out
18 what we think the progress was going to be, how long this
19 was going to take.

20 Q. And a few lines down, Mr. Reidl, you then go on to
21 write -- and, Kim, it's just three lines down -- "I
22 cannot determine."

23 Could you read that for the jury,
24 Mr. Reidl? Do you see that?

10:31:49 25 A. "I cannot determine how much more of our customer

1 base has been permanently lost, and how much of the sales
2 loss can be recouped, since I cannot assure our customers
3 of the resolution of our implementation problems."

4 Q. What do you mean by that?

10:32:06 5 A. Our service had deteriorated to the point where
6 customers were getting very concerned about our
7 operations, and of course we were concerned because our
8 employees are having difficulty quoting. A big portion
9 of our business is quote over the phone. And they could
10:32:33 10 not get the information necessary to quote.

11 So we were so busy trying to keep our
12 company going that we didn't have time to keep a log of
13 all the things that were deteriorating around us.

14 Q. Right. And, in fact, the next sentence, you talk
15 about your warehouse productivity. Do you see that?

16 A. Yes.

17 Q. And so can you read that for the jury as well,
18 please?

19 A. Okay. "Our warehouse productivity has dropped off
20 more than 30%, billing and shipping errors abound -- not
21 all the problems of Hodell-Natco. Office overtime is sky
22 rocketing and employee drop-out is hard to forecast,
23 based on current stress level."

24 Q. Could you explain what you mean here for the jury?

10:33:29 25 A. We were spending a lot of time after-hours to do

things that we should be doing during the day such as
entering orders when not as many people were on the
system in the evening, or early in the morning.

4 We lost a number of employees. Our
5 turnover was probably a little higher than normal because
6 of that.

7 And we had difficulties, we would have
8 dropped invoices. We didn't know if it was being
9 e-mailed. It might print locally and nobody could follow
0 up to see where -- whether the customer was billed.

10:34:13 10 up to see where -- whether the customer was billed.

11 Q. So again, if you go a little further down in this

12 e-mail, in addition to talking about, you know, the

13 financial implications and, you know, some of the

14 implications with the warehouse, further down you talk

10:34:33 15 about, "As for the number of user issue, I don't buy it."

16 Do you see that, Mr. Reidl.

17 A. Yes.

18 Q. And then you talk about the system, right; updating
19 a customer profile takes three and a half minutes?

10:34:46 20 A. Correct.

21 Q. Can you tell us a little bit about that, please?

22 A. When we set up or modify a customer profile,
23 meaning information, either address or contact person or
24 just basically the customer information in the system, it
25 would take three and a half minutes to update that.

1 Q. And why are you referring to, "As the number of
2 user issue"?

3 What does that mean to you in this e-mail?

4 A. I was not being told the truth about the
10:35:33 5 capabilities of the system in terms of the number of
6 users.

7 Q. And down at the bottom, you talk about fixing the
8 problem now.

9 Do you see that?

10 A. Yes.

11 Q. And you also state, "We explained the urgency in
12 our conference call last week," and that was the April
13 17th, 2007 call, correct?

14 A. Correct.

10:35:59 15 Q. And if you'd flip to the first page of this
16 document, at the very top, Mr. Reidl, there's an internal
17 e-mail -- do you see that -- between Dan Kraus, Niels
18 Stenfeldt, Dirk Boessmann, and it's from Udi Ziv?

19 A. Correct.

20 Q. And what is Mr. Ziv stating here?

21 A. "There is not much we can do here. We will supply
22 what may be a fix for the current problem, but we know
23 that there will be others. There is no doubt that this
24 is not a B1 customer, and we somehow need to get away
10:36:48 25 from this."

1 Q. Mr. Reidl, on April 25th, 2007, did Udi Ziv call
2 you to tell you that Business One would not work?

3 A. No, he did not.

4 Q. Did Dan Kraus make that call?

10:37:07 5 A. No, he did not.

6 Q. Did Niels Stenfeldt make that call?

7 A. No, he did not.

8 Q. Did Dirk Boessmann make that call?

9 A. No.

10:37:16 10 Q. Did they e-mail you?

11 A. No.

12 Q. Would you have liked to have known on April 25th,
13 2007, that there is not much SAP can do for you and there
14 is no doubt that this is not a B1 customer?

10:37:36 15 Would you have liked to have known that?

16 A. Absolutely. Once you know you have a problem, you
17 can start taking alternate action.

18 Q. And this is in response to your earlier e-mail
19 where you're expressing that your company is in dire
20 straits, correct?

21 A. Correct.

22 Q. And this e-mail that you sent was forwarded by Dan
23 Lowery to this group of individuals, correct?

24 A. Correct.

10:38:14 25 Q. I'd like to turn you, Mr. Reidl, to Exhibit 19,

1 please.

2 Could you identify this document for me,
3 Mr. Reidl?

4 A. This is -- these are handwritten notes, my
10:38:43 5 handwritten notes on a telephone conference between LSi,

6 Radio Beacon, SAP, and I list the individuals.

7 It was dated May 11th, '07.

8 Q. And so on this call, Mr. Reidl, just so we're
9 clear, under the heading "SAP," Dirk Boessmann was on
10:39:09 10 this call, correct?

11 A. Yes, he was.

12 Q. And Paul Killingsworth was on this call?

13 A. Correct.

14 Q. And could you tell us, based on these notes -- and
10:39:20 15 these notes were taken at the same time of this call or
16 shortly thereafter, correct?

17 A. They were taken during the call.

18 Q. During the call itself?

19 A. Yes.

20 Q. And this is your handwriting?

21 A. Yes, it is.

22 Q. And could you tell me what you asked SAP on this
23 call and what their responses were?

24 A. I asked to obtain an answer on the system
10:39:49 25 capability to handle our growth projection of 13% per

1 year.

2 Q. And that's reflected in the bottom paragraph, is
3 that right?

4 A. Correct.

10:40:04 5 Q. And the next line, it says, "Paul to try and get
6 back to us on Monday."

7 Is that Paul Killingsworth?

8 A. Yes.

9 Q. And what else is SAP telling you on this call?

10:40:16 10 A. That middle of next week, following the date
11 hereon, there would be a -- or near the end of the week,
12 there would be a Patch Level 24 that would address some
13 of the issues that we're experiencing.

14 Q. And --

15 A. And prior to that, they had discussed earlier in
16 the conversation, they discussed a Patch Level 23 that
17 was released and is ready to be downloaded into our
18 system.

19 Q. So despite all the -- all the e-mails that we've
20 just covered, SAP on this call is telling you "We're
21 going to give you a couple of patches"?

22 A. Correct.

23 Q. And Dirk Boessmann, on that call, he did not tell
24 you that Business One would not work for Hodell, did he?

10:41:17 25 A. Absolutely not.

1 Q. And did Paul Killingsworth tell you Business One
2 would not work?

3 A. No, he did not.

4 Q. I'd like to turn to Exhibit 437, please.

10:42:11 5 And, Mr. Reidl, can you identify this
6 document for me, please?

7 A. Yes. This is an e-mail from Paul Killingsworth to
8 Kevin Reidl and myself with CC to Dan Lowery and himself
9 also, Paul Killingsworth.

10:42:37 10 Q. And this e-mail is dated a few days after the May
11 11th, 2007 call, correct?

12 A. Correct.

13 Q. And you actually received this at the time, is that
14 correct?

10:42:53 15 A. Correct.

16 Q. And on Line 1 of the document, what is
17 Mr. Killingsworth telling you?

18 A. That that afternoon they had an internal meeting
19 "With our team regarding" the Hodell-Natco situation.

10:43:18 20 Q. And then I think you see in the second paragraph,
21 he references Dirk.

22 Would that be Dirk Boessmann?

23 A. Yes.

24 Q. And so did you assume that he was talking to Dirk
10:43:32 25 Boessmann and others at SAP about Hodell-Natco?

1 A. That is what he was stating here.

2 Q. And in the second sentence of the second paragraph,
3 what is Mr. Killingsworth telling you?

4 A. As a result of the work that the development team
10:44:07 5 was performing, it was their belief that the results of
6 these efforts will substantially realize in the PL 23
7 release.

8 That implies to me there will be some
9 improvement and substantial improvement.

10 Q. Um-hmm. And, in fact, in the third paragraph, the
11 first couple of lines, that just underscores what you
12 stated, correct?

13 A. Correct.

14 Q. Because he's indicating to you here that Patch
10:44:55 15 Level 23 is going to help, right?

16 A. That is correct.

17 Q. And, in fact, he states, "As you well understand
18 and have stated yourselves, the future of Business One
19 with your company lies heavily with success of this patch
20 level."

21 Do you see that?

22 A. Yes, I do.

23 Q. And then if you go down a little further in this
24 paragraph, starting with the word "Functionally."

10:45:27 25 A. Yes.

1 Q. Could you read that sentence for the jury, please?

2 A. "Functionally, the product -- with the additions of
3 In-Flight and Radio Beacon -- is an outstanding business
4 solution for you and your company."

10:45:48 5 Q. And the product he's referring to there is Business
6 One, correct?

7 A. Correct, and the add-ons.

8 Q. And based on what you now know from the e-mails
9 that we've covered, on May 14th, 2007, was SAP lying to
10 you in this e-mail?

11 MR. STAR: Objection.

12 THE COURT: Overruled.

13 A. Yes.

14 Q. And, in fact, was Business One an outstanding
15 business solution for you and your company?

16 A. Not by any stretch of the imagination.

17 Q. And did you rely on what Mr. Killingsworth from SAP
18 in customer service was telling you about patch levels
19 and how they would work for Hodell, were you relying on
20 that information?

21 A. Yes. They're holding out hope that things will get
22 better.

23 Q. And this is almost a month after that initial phone
24 call, correct?

10:46:58 25 A. Correct.

1 Q. And this is after you've e-mailed them and talked
2 to them about the dire straits your company is in,
3 correct?

4 A. That is correct.

10:47:13 5 Q. Could you turn to Exhibit 439, Kim?

6 And I'd like to refer you to the second
7 e-mail in this chain, Mr. Reidl.

8 A. Yes.

9 Q. And you see this e-mail is from Dirk Boessmann to
10 Dan Kraus dated May 22nd, is that correct?

11 A. That is correct.

12 Q. And could you read for the jury the last three
13 sentences here, starting with the word "But"?

14 A. "But that is in the case -- in this case not the
15 key question Hodell needs to get answered. You have to
16 tell them that with a target of 300 users they do not
17 have the right product out of the SAP portfolio. If they
18 continue to discuss with me, they are just losing time
19 and money. From my perspective it is now time to be
20 honest to the customer."

21 MR. STAR: Your Honor, I object. This
22 exhibit wasn't put before --

23 THE COURT: The objection is sustained.

24 BY MS. LUARDE:

10:48:48 25 Q. Did anyone call you on May 22nd and tell you that

1 you need to move off of Business One?

2 A. No, they did not.

3 MR. STAR: Your Honor, could she take the
4 exhibit down?

10:49:03 5 THE COURT: Yeah.

6 BY MS. LUARDE:

7 Q. Mr. Reidl, I'd like to turn you to Exhibit 89,
8 please.

9 And could you identify this document for
10 us, Mr. Reidl?

11 A. This is an e-mail from Paul Killingsworth of SAP
12 America to Kevin Reidl and myself with copies to a number
13 of individuals, Jon Woodrum, Elliott Ross, Dan Kraus,
14 Geoff Ashley, Dan Lowery, Manfred Weiss, Reggie Paquin,
10:50:03 15 Paul Killingsworth.

16 Q. Okay. And the date of this e-mail is actually June
17 6th, 2007, correct?

18 A. That is correct.

19 Q. And so Mr. Killingsworth, who is -- actually his
20 title here on this document is senior manager, customer
21 relations.

22 Do you see that down at the bottom?

23 A. Correct.

24 Q. He's telling you in the first paragraph, can you
10:50:41 25 read that last sentence?

1 A. "We know this time has been very difficult for you
2 and your employees.

3 Q. So he's acknowledging the difficulties that you're
4 experiencing, right?

10:50:56 5 A. That is correct.

6 Q. And then in the second paragraph, could you read
7 the first sentence for the jury, please?

8 A. "Regarding the performance improvements in SAP
9 Business One 2007A, as Dirk Boessmann mentioned in our
10 last call together, performance improvements were a high
11 priority in this release."

12 Q. So earlier they were talking about new patch levels
13 and now SAP is telling you that you're going to have more
14 improvements with SAP Business One 2007A, correct?

10:51:35 15 A. Correct.

16 Q. Did you believe that they were giving you hope that
17 Business One could work?

18 MR. STAR: Objection. Leading.

19 THE COURT: Objection sustained.

20 Q. In the third paragraph, the last sentence,
21 Mr. Reidl, could you read that, please?

22 A. "Nonetheless, it is reasonable to believe that you
23 will experience significant performance improvements in
24 many areas with SAP Business One 2007A when it is
10:52:17 25 implemented at Hodell-Natco."

1 Q. So what is SAP telling you in this e-mail?

2 A. We're going to have significant improvements.

3 Q. Based on all the e-mails that we just covered, do
4 you believe that SAP was being honest with you in this
10:52:40 5 e-mail?

6 A. Quite the contrary.

7 MR. STAR: Your Honor, he needs to stick to
8 the facts that he knew at the time. He's being asked to
9 give opinions.

10:52:53 10 THE COURT: Did you object to that
11 question?

12 MR. STAR: I objected to a bunch of them on
13 this line.

14 THE COURT: Yeah. Go ahead, ask another
10:53:02 15 one.

16 BY MS. LUARDE:

17 Q. Could we turn to Exhibit 109, please?

18 Mr. Reidl, could you identify this
19 document, please?

20 A. Yes. This is an e-mail from Michael Sotnick at SAP
21 America to myself, Kevin Reidl, Dan Lowery, with copies
22 to Jon Woodrum at LSi, Dan Kraus, Paul Killingsworth.

23 Q. And what is the date of this document, Mr. Reidl?

24 A. This is November 16th, 2007.

10:54:06 25 Q. And about how many months was this after Hodell had

1 started operating with the Business One software?

2 A. Eight and a half months.

3 Q. And what is being conveyed to you in this e-mail,
4 Mr. Reidl?

10:54:27 5 A. In essence, there's nothing much more that can be
6 done with SAP Business One.

7 Q. And is this the first time that anyone at SAP told
8 you that Business One would not work for Hodell?

9 A. That is correct.

10:55:06 10 Q. Mr. Reidl, I'd like to turn now to a different
11 topic, and, you know, throughout the course of the trial,
12 and I think you may recall during opening, that Mr. Star
13 implied that Business One didn't impact Hodell because
14 the financials show that 2008 was Hodell's best year or a
15 great year.

16 Do you recall that?

17 A. Yes.

18 Q. Do you agree with Mr. Star?

19 A. No.

10:55:52 20 Q. In fact, could you tell me a little bit about your
21 role as CEO, how intimate are you with the company's
22 financials?

23 A. On a daily basis, I track sales orders in, invoice
24 levels, fill rights that is actually tracked right on our
10:56:14 25 system, and I look at the gross margin on the orders.

1 That's on a daily basis, and month-to-date, and look at
2 the invoicing and the margins for that.

3 And at the end of the month, I spend
4 several days with our controller to go over the final
10:56:41 5 financial statements for the company before they are
6 published. And I go over it with her line item by line
7 item.

8 Q. And again, if you could refresh my recollection,
9 how long have you been president or CEO of Hodell or its
10:57:01 10 predecessor?

11 A. Almost 35 years.

12 Q. So you've been working with financials --

13 A. When you count the predecessors. We started with
14 Hodell in 1983, so it's 32 years.

10:57:16 15 Q. 32 years?

16 A. Yes.

17 Q. And you worked with financial information while you
18 were at BFGoodrich as well, correct?

19 A. Correct.

20 Q. So you have a lot of experience dealing with
21 financial information?

22 MR. STAR: Objection, Your Honor. They're
23 trying to proffer him as an expert.

24 THE COURT: Yeah.

10:57:31 25 MS. LUARDE: Okay. I'll move along.

1 BY MS. LUARDE:

2 Q. And so, Mr. Reidl, could you tell the jury what
3 year was your record year at Hodell?

4 A. 2006.

10:57:41 5 Q. And could you tell me a couple of the critical
6 factors that made 2006 a record year?

7 A. Yes.

8 First, high sales level, high gross margin,
9 and net profit before tax, that is the profit of the
10 corporation.

11 In addition, we shipped record pounds. And
12 let me explain why I look at record pound volumes.

13 MR. STAR: Sorry to interrupt, but I'm
14 going to object.

10:58:16 15 THE COURT: Yeah, put another question to
16 him.

17 BY MS. LUARDE:

18 Q. Okay.

19 Just so I'm clear, Mr. Reidl, 2006, there
20 was an event that occurred in 2006 that made it a great
21 year, and that was an acquisition, correct?

22 A. Correct.

23 MR. STAR: Objection. Leading.

24 THE COURT: Overruled.

10:58:31 25 Q. Mr. Reidl, I'd like to put in front of you portions

1 of Exhibit 607.

2 And bear with me just one moment, please.

3 A. Okay.

4 MS. LUARDE: May I approach, Your Honor?

10:59:10 5 THE COURT: You may.

6 MS. LUARDE: Thank you.

7 BY MS. LUARDE:

8 Q. And, Mr. Reidl, could you tell the jury, I handed
9 you a pretty thick stack of documents.

10:59:33 10 Could you tell us what those documents
11 represent?

12 A. They are the audited financial statements for our
13 performance for Hodell-Natco Industries, both balance
14 sheet and income, 2007, 2006. They're all -- all three
11:00:03 15 are for the period 2006 and 2007.

16 Q. If you could look back --

17 A. I'm sorry, there are more pages.

18 Q. -- I think I gave you three copies of --

19 A. They are a full stack, okay.

11:00:17 20 At the back, the last statement in the
21 stack, the last one is 2000 -- December 31st, 2010 and
22 2009, December 31st, 2009 and 2008, December 31st;
23 December 31st, 2008 and 2007, and the top one is December
24 31st, 2007; and December 31st, 2006.

11:01:18 25 So it goes from 2006 through 2010.

1 Q. And those are accurate copies of Hodell's financial
2 statements, correct?

3 A. Correct.

4 Q. Kim, could you please pull up Exhibit 24?

11:01:42 5 Q. And just so we're clear, you're involved in
6 the preparation and review of your company's financial
7 statements, correct?

8 A. That is correct.

9 Q. And that's part of your responsibility as CEO?

11:01:53 10 A. Correct.

11 Q. And, Mr. Reidl, I've put up on this screen the
12 first page of Exhibit 24.

13 Q. Could you identify this document for the
14 jury?

11:02:10 15 A. This exhibit is a summary of the financial
16 performance month-by-month for calendar year 2002 through
17 and then an annual figure at the far right column.

18 Q. Okay. And this page is actually just 2002, and
19 just so we're clear, the far right column, where it says,
11:02:34 20 "Annual," that's the annual figures for 2002?

21 A. Correct.

22 Q. And are you familiar with this document, Mr. Reidl?

23 A. Yes, I am.

24 Q. And is this a document that you rely on in your
11:02:55 25 role as CEO?

1 A. Yes, I do.

2 Q. And do you have personal knowledge about the
3 content of this document?

4 A. Yes. This is a document that we have prepared
11:03:11 5 since 1984, and the predecessor company that owned it
6 during our due diligence, produced three years prior to
7 that.

8 Q. And is this document prepared in the normal course
9 of your business?

11:03:28 10 A. Correct. It is prepared every month.

11 Q. And you personally review this document, right?

12 A. Yes, I do.

13 Q. And you would consider this a business record?

14 A. I'm sorry, could you repeat that?

11:03:45 15 Q. Sure. You would consider this to be a business
16 record, correct?

17 A. Yes.

18 Q. Mr. Reidl, I'm going to --

19 MS. LUARDE: If I may approach, Your Honor,
11:04:02 20 and put up a demonstrative for the jury.

21 THE COURT: Go ahead.

22 MS. LUARDE: Thank you.

23 MR. STAR: May I see that before it goes
24 up?

11:04:19 25 THE COURT: Yes.

1 MS. LUARDE: And, Your Honor, I'm going to
2 be asking Mr. Reidl to point to different numbers on this
3 demonstrative.

4 Would it be okay if he attached a
11:05:11 5 microphone and assisted the jury?

6 THE COURT: Sure.

7 MS. LUARDE: Thank you.

8 MR. MILLER: Your Honor, if we can just
9 have a minute, we're trying to get an electronic copy.

11:05:58 10 MR. STAR: It's right there.

11 MR. MILLER: Okay. That's very helpful.

12 THE WITNESS: Excuse me.

13 BY MS. LUARDE:

14 Q. Okay. Mr. Reidl, we had just looked at Exhibit 24
11:06:38 15 that contained month-to-month and then year-end.

16 Could you tell us what this demonstrative
17 actually represents?

18 A. This demonstrative represents data extracted from
19 each of the summary statements that are -- we saw year
20 2002 on the screen, the same document is prepared for
21 '03, '04, '05, '06, '07, '08 and the first quarter of
22 2009 on this demonstrative.

23 Q. And, Mr. Reidl, we've heard a lot about gross sales
24 and gross profits and how 2008 was your best year.

11:07:35 25 Could you circle gross sales and gross

1 profits for 2008?

A. I'm not sure. Can you see the circle?

3 MR. LAMBERT: 2006.

4 A. 2006, 2008 gross sales.

11:08:18 5 MS. LUARDE: Otto, I think your mic may be
6 off.

7 THE WITNESS: Pardon?

8 MS. LUARDE: I think your mic is off.

9 | Technology. There.

11:08:34 10 Is it working now?

11 THE WITNESS: Is it working? Can you hear
12 me? Sorry.

13 BY MS. LUARDE:

14 Q. And, Mr. Reidl, could you tell us and the jury what
15 the gross sales were for 2008?

16 A. \$43,877,103.

17 Q. And what were they for 2006?

18 A. \$42,965,574.

19 Q. So if you just look at those numbers, you would
11:09:12 20 agree that 2008 is bigger than 2006, correct?

A. That's what it would imply.

22 Q. But can you tell the jury what is meant by "Gross
23 sales"?

24 A. That's the total value of the invoices before any
11:09:34 25 adjustments, returns, so forth.

1 Q. Does that -- does that tell you, Mr. Reidl, what
2 your best year is if you just look at that figure?

3 MR. STAR: Objection. Calls for an expert
4 opinion.

11:09:50 5 THE COURT: Overruled.

6 A. No.

7 Q. What --

8 A. Gross sales alone do not tell you what your overall
9 performance is.

11:10:00 10 There are interim steps, such as gross
11 profit. Should I circle that?

12 Q. Yes, please.

13 MR. STAR: Your Honor, objection. He's
14 testifying as an expert.

11:10:15 15 THE COURT: Overruled.

16 A. Gross sales and gross profit are intermediate steps
17 in determining the profitability of the company.

18 They are --

19 MR. STAR: There's no question pending,
20 Your Honor.

21 BY MS. LUARDE:

22 Q. Could you tell us what is meant by "Gross profits,"
23 Mr. Reidl?

24 A. Yes. It's the gross sales minus various sales
25 deductions and adjustments and the warehouse operating

1 costs.

2 Q. And could you tell the jury which number Hodell
3 relies upon to measure its profitability?

4 A. The line called "Profit before tax."

11:11:10 5 And for 2006, a million-five; 2008, 860 or
6 870,000 rounded. So approximately half of the
7 profitability of 2006, a little more than half, and not a
8 record profit year as was stated by Mr. Star.

9 Q. And just so the jury understands, what does it mean
11:11:45 10 when you have up on this document "Profit before taxes"?

11 A. That is the number that is reported on our tax
12 return with perhaps minor adjustments for -- that the
13 auditors make.

14 Q. And that number is actually -- all overhead
11:12:12 15 expenses are taken out prior to that, correct?

16 A. Correct. It -- before gross -- after gross profit,
17 we still have to pay the entire office staff, our bank
18 debt, our interest payment. We have to pay our outside
19 auditors, our sales reps.

20 Q. And so this is one indicator to you that 2006 was
21 much better than 2008, correct?

22 MR. STAR: Objection. Leading.

23 THE COURT: Overruled.

24 Q. You may answer.

11:12:48 25 A. Absolutely.

1 Q. And are there some other indicators as well,

2 Mr. Reidl?

3 A. Yes.

4 One thing we track is pounds shipped, and
11:13:00 5 we track the selling price of the pounds and we track the
6 cost to us for the purchases for that, and the difference
7 is our cents or dollar per pound that we have left over.

8 We don't have that on here, but what we see
9 is our record of pounds shipment was --

11:13:28 10 MR. STAR: Objection.

11 THE COURT: Overruled.

12 Go ahead.

13 A. -- 23,312,148.

14 Q. And what year was that, Mr. Reidl?

11:13:38 15 A. 2006.

16 Q. And how many pounds were shipped then in 2008?

17 A. 20 -- I'm sorry -- 20,334,692.

18 Q. And so there's a difference there between '06 and
19 '08.

11:14:01 20 What is that difference, Mr. Reidl?

21 A. That's about three million pound difference, about
22 a two percent drop in the pounds shipped.

23 Q. Just so I understand, if the number of pounds
24 shipped decreased by three million pounds from 2006 to
11:14:22 25 2008, how is it possible to have increased gross sales?

1 A. If I direct your attention to the third line from
2 the bottom, you see that the average selling price
3 between 2006 on a per pound basis, it went from
4 one -- \$1.80 to \$2.12 per pound, so that's an inflation
11:14:50 5 of 32, almost 17% inflation in selling price.

6 Q. So the cost of the product went up in 2008?

7 A. Correct.

8 The cost of the product from -- the selling
9 price of the product went up.

11:15:16 10 Q. So would you agree with me that if you
11 multiplied --

12 MR. STAR: Objection. Leading.

13 MS. LUARDE: I'm asking a question.

14 THE COURT: Finish the question.

11:15:27 15 BY MS. LUARDE:

16 Q. If you multiplied the two -- what would happen if
17 you multiplied the pounds shipped in 2008 by the selling
18 price in 2006? What would happen to the gross sales?

19 MR. STAR: Objection. Relevance.

11:15:43 20 THE COURT: Objection sustained.

21 Q. Mr. Reidl, I'd like to put a different
22 demonstrative in front of you.

23 Mr. Reidl, could you -- this demonstrative
24 that I placed in front of you, could you tell me or
11:17:26 25 explain to the jury what this demonstrative means?

1 A. Yes. In this demonstrative, we have plotted
2 the -- from the charts that you just saw for the years
3 involved from December, '04 up through, actually
4 December, '08, and actually beyond on an annualized
11:17:57 5 basis, but we plotted the gross profit and that's the
6 blue line for those respective time periods.

7 The gross profit scale is over here. The
8 net profit scale is over here.

9 The red line reflects the gross profit over
11:18:18 10 that same time frame, and you can see here that the gross
11 profit and net profit track almost parallel, but on this
12 side, the profit before tax -- I'm sorry, this is profit
13 before tax and gross profit on the back side, this is
14 gross profit and profit before tax while we were
11:18:52 15 operating on SAP.

16 Q. And Mr. --

17 A. They run fairly parallel. Here they diverge.

18 Q. And, Mr. Reidl, is that telling you in part that
19 during the period of time you were on SAP Business One,
11:19:07 20 that you had increased overhead?

21 MR. STAR: Objection.

22 A. That is correct.

23 THE COURT: Overruled.

24 Q. And prior to going on SAP Business One, could you
11:19:19 25 tell us a little bit about the trend line while on the

1 FACTS system?

2 A. This trend line here?

3 Q. Yes.

4 A. They tended to track each other.

11:19:34 5 Q. And it was increasing as well, is that correct?

6 A. That is correct.

7 Q. And in addition to the divergence between gross and
8 net after being on Business One, what else do you see
9 from this chart?

11:19:54 10 A. Could you repeat that question?

11 Q. Sure. It was a horrible question.

12 What other -- when you look at this chart
13 as the CEO, what do you conclude with regard to the
14 implementation of Business One?

11:20:15 15 MR. STAR: Objection.

16 THE COURT: The objection's overruled.

17 A. It was an abysmal failure.

18 Q. And so it's your -- is it your conclusion that
19 Business One was the cause of financial harm to Hodell?

11:20:36 20 MR. STAR: Objection.

21 THE COURT: Overruled.

22 A. That is correct.

23 Q. Thank you. You can return to your seat.

24 In your role as CEO, Mr. Reidl, did you

11:21:13 25 personally calculate the amount of damages suffered as a

1 result of the failure of SAP Business One?

2 MR. STAR: Objection.

3 THE COURT: Objection sustained.

4 Q. Mr. Reidl, did Hodell suffer from increased
11:21:41 5 overhead expenses while running Business One?

6 A. Yes, we did.

7 Q. And what do you mean by the phrase "Increased
8 overhead expenses"?

9 A. It's the cost of the increase in employment
11:22:02 10 required under SAP for the -- if we had operated under
FACTS to ship out the same pound volume of product.

12 Q. Okay. And so just so I understand, it took more
13 people and cost more money to ship product under SAP than
14 it would have taken to ship that same number of pounds
11:22:39 15 using FACTS, is that correct?

16 A. That is correct.

17 MR. STAR: Objection.

18 THE COURT: Yeah, how about laying us a
19 foundation for that?

20 BY MS. LUARDE:

21 Q. Okay. Mr. Reidl, I'd like to put in front of you,
22 if you go back to Exhibit 24. And, Mr. Reidl, we
23 discussed how this is a document maintained in the
24 ordinary course of your business at Hodell, correct?

25 A. That is correct.

1 Q. And this document is based on the financial
2 documents, 607, that you have in front of you, correct?
3 A. Correct.

11:23:22 4 Q. And all of these documents are financial records
5 that are maintained in the ordinary course of business at
6 Hodell, correct?

7 A. That is correct.

8 Q. And you as CEO of the company are personally
9 familiar with the financials at Hodell?

11:23:36 10 A. Correct.

11 Q. And, in fact, that's one of your major
12 responsibilities, right?

13 A. That's my primary responsibility.

14 Q. And, in fact, as CEO, you are concerned about the
15 impact Business One was having at Hodell, correct?

16 MR. STAR: Objection. Leading.

17 THE COURT: Overruled.

18 A. That is correct.

19 Q. And so you actually looked at the financials to see
20 what was occurring, is that correct?

21 A. Yes, I do, on a monthly basis.

22 Q. Kim, could we have Exhibit 25, please?

23 MR. STAR: Before that goes up, we object
24 to Exhibit 25.

11:24:18 25 THE COURT: Can we talk about it?

1 MR. STAR: Yes.

2 THE COURT: You can stand and stretch if
3 you want.

4 (Side-bar conference had off the record).

11:29:52 5 THE COURT: Okay.

6 MS. LUARDE: I apologize. Could I get a
7 document, Your Honor?

8 THE COURT: Yes.

9 MS. LUARDE: Thank you.

11:30:52 10 BY MS. LUARDE:

11 Q. Mr. Reidl, we had just looked at a demonstrative
12 that demonstrates that there was, in your testimony, an
13 increase in overhead expense with the implementation of
14 Business One.

11:31:10 15 Do you recall that demonstrative?

16 A. Yes.

17 Q. And what I'd like to talk about now is one of the
18 components of overhead at your company, and that relates
19 to employee cost, is that right?

20 A. Correct.

21 Q. And, Mr. Reidl, at one point in time you took a
22 look at employee costs and the impact on productivity.

23 Do you recall doing that?

24 A. Yes.

25 Q. And, Mr. Reidl, I'd like you to explain to me one

1 component of that calculation, and that first component,
2 could you explain to me how you track employee
3 productivity?

4 MR. STAR: Objection. Calls for expert
11:32:05 5 opinion.

6 THE COURT: Overruled.

7 A. Okay. I can give a basic example.

8 We sell steel products. Over 95% of our
9 products are made from steel. If you -- everybody
11:32:26 10 recognizes what a bolt is. If we have -- excuse me -- an
11 order for a hundred pieces of a bolt out of standard low
12 carbon steel, and we have another order for a hundred
13 pieces of a similar -- the identical size bolt in
14 stainless steel, they weigh the same, all activity in our
11:33:00 15 organization takes the same amount of effort and time to
16 accomplish.

17 The steel, low carbon steel product sells
18 in the range of \$1.80 a pound. A 3/16 stainless part in
19 that same size, has the same weight per part, but the
11:33:27 20 selling price would be in the range of \$3.60 a pound.

21 So the one order is half of the dollar
22 value of the other order, but they took exactly the same
23 amount of effort, throughout our organization, all
24 efforts, office and warehouse.

11:33:50 25 So the measure of our performance is based

1 on how many people we need to handle a given amount of
2 pounds shipped.

3 Q. And so --

4 A. And that's something we've been tracking since
11:34:09 5 1984. And we track the number of people on a monthly
6 basis that we have on board at the end of the month, and
7 we come up with an average number for the year for the
8 number of employees that we have on staff for the pounds
9 that we ship that year.

11:34:29 10 And that gives us a pounds per employee
11 shipped per year.

12 Q. And so, Mr. Reidl, so I understand, you -- your
13 business, you're in the business of distributing steel
14 products that have different weights and actually steel
15 products, and the steel products will have consistent
16 weights, correct?

17 A. Correct.

18 Q. And they've had consistent weight ever since you've
19 been in this industry, right?

11:35:09 20 A. As far as specific products, yes.

21 Q. Okay. And again, just so I understand, in order to
22 ship those steel products, it takes the same amount of
23 effort, whether the price is \$5 per part or \$20 per part,
24 correct?

11:35:34 25 A. Correct.

1 Q. Okay. And that's why you have this metric of
2 pounds shipped per employee?

3 A. That is correct.

4 Q. And you track this on a regular basis at your
11:35:45 5 company?

6 A. Correct.

7 Q. Kim, could I see Exhibit 24 for just a minute?

8 And, Mr. Reidl, on Exhibit 24 -- this is
9 the 2002 year as an example -- this document actually
11:36:21 10 shows the number of pounds shipped per month, is that
11 correct?

12 A. Correct.

13 Q. And then it also establishes total hours worked,
14 correct?

11:36:33 15 A. Correct.

16 Q. And it has --

17 A. But that is hours for the warehouse.

18 Q. Okay. And up above, though -- thank you for
19 correcting me -- are the number of employees, right?

11:36:45 20 A. Correct.

21 Q. So how do you -- how do you do this calculation,
22 then, this pounds shipped per employee?

23 A. You divide the line that says "Pounds shipped," the
24 number in that line, by the total population, which is in
11:37:07 25 three lines above.

1 Q. Okay. And so for this, the Business One effect on
2 productivity, did you perform a similar calculation to
3 determine employee productivity?

4 MR. STAR: Objection.

11:37:35 5 THE COURT: Sustained.

6 Q. Mr. Reidl --

7 THE COURT: You can ask him to do the
8 calculation, if you want.

9 MS. LUARDE: Okay. I will do that.

11:38:00 10 BY MS. LUARDE:

11 Q. Mr. Reidl, if I gave you the entire Exhibit 24,
12 would you be able to calculate Business One's effect on
13 productivity and including the calculation we just
14 covered, which is the pounds shipped per employee?

11:38:21 15 MR. STAR: Object to the question, Judge.

16 THE COURT: Objection sustained.

17 Again, he can do the mathematical.

18 Attributing to what caused it is another issue.

19 MS. LUARDE: Okay. Thank you, Your Honor.

11:38:34 20 BY MS. LUARDE:

21 Q. Were you able to calculate -- are you able to
22 calculate from Exhibit 24 the number of pounds shipped
23 per employee while on Business One?

24 A. Correct.

11:38:52 25 Q. And did you at one point undertake that

1 calculation?

2 A. Yes, I do. I calculate the pounds shipped per
3 employee every year, every month.

4 Q. And while on Business One, do you recall -- you
11:39:20 5 recall performing that calculation. Do you recall the
6 number that you reached?

7 A. I would have to have my documents in front of me or
8 get a calculator and I can do it right here.

9 MS. LUARDE: Your Honor, may I put a
11:39:45 10 document in front of the witness so --

11 THE COURT: You may.

12 MS. LUARDE: -- he can answer the question?

13 Thank you, Your Honor.

14 MR. STAR: Your Honor, I just object. If
11:40:05 15 she wants to refresh his recollection, but --

16 THE COURT: I think that's what she's going
17 to do.

18 MR. STAR: Okay. I don't want him to be
19 testifying from a document that's not before this jury.

20 BY MS. LUARDE:

21 Q. Mr. Reidl, I believe you just testified that you
22 couldn't recall off the -- at your fingertips what the
23 number was that you calculated that represented the
24 number of pounds shipped per employee while on SAP
11:40:30 25 Business One.

1 And looking at this document, does that
2 refresh your recollection?

3 A. Yes.

4 Q. And what was that number?

11:40:39 5 A. 108,406 on an annualized basis per employee.

6 Q. And that covers what time period?

7 A. Twenty-five months.

8 Q. And did you perform that same calculation,
9 Mr. Reidl, for the period of time that you used the FACTS
11:41:03 10 system?

11 A. Yes. I did that on this chart from 2002 to
12 February, 2007.

13 Q. And could you tell me what the number of pounds
14 shipped per employee while using FACTS, what that number
11:41:21 15 would be?

16 A. The average for that time period that I just stated
17 was 127,138 pounds per employee per year.

18 Q. And so there was a -- and what conclusion do you
19 reach from that difference?

11:41:43 20 A. That there was a significant drop.

21 MR. STAR: Objection.

22 THE COURT: He can just do the math.

23 BY MS. LUARDE:

24 Q. Okay. What is the difference between -- all right.
11:41:53 25 On FACTS, more pounds were shipped per employee of

1 127,138, and if you deduct what the SAP average 25-month
2 time period was, what number does that give you?

3 A. Can you ask that question again, please?

4 Q. I will try. If you do the math, what is the
5 difference between the number of pounds shipped per
6 employee on FACTS and SAP?

7 A. Yeah. If I look at the pounds shipped for SAP for
8 the 25-month period, it averages 19,985,215 on an annual
9 basis.

11:42:38 10 The average employees that we used was
11 184.36.

12 Had we shipped the same pounds --

13 MR. STAR: Objection. He's answering a
14 different question.

11:42:52 15 THE COURT: You asked a different question.

I think the question is simple and that was what was it when you had SAP and what was it before, the number of employees and the number of pounds shipped.

19 MS. LUARDE: Right.

11:43:04 20 THE COURT: Those two things.

21 | BY MS. LUARDE:

22 Q. Mr. Reidl, I guess just to make it easy, so based
23 on this calculation, the FACTS average was 127,138,
24 correct?

11:43:21 25 A. Correct.

1 Q. And the SAP average was 108,406, correct?

2 A. Correct.

3 Q. And the number of pounds, that's the number of
4 pounds per employee, is that correct, annualized on FACTS
11:43:38 5 and Business One?

6 A. Read that number again.

7 Q. Sure. On the FACTS -- we'll try. On the FACTS --
8 THE COURT: Wait a minute. Wait a minute.

9 Sharon, this is a little painful.

11:43:51 10 MS. LUARDE: It is painful. That's why --

11 THE COURT: As I hear your testimony,
12 there's 19,000 pounds less during the SAP time.

13 THE WITNESS: Correct.

14 THE COURT: Okay. And what are the number
11:44:09 15 of employees for both times?

16 THE WITNESS: The number of employees that
17 we used to support the SAP business, if I understand your
18 question correctly --

19 THE COURT: Correct. Yes.

20 THE WITNESS: -- was an average of 184.36.

21 THE COURT: And how about with FACTS?

22 THE WITNESS: If we --

23 THE COURT: How many employees to support
24 FACTS?

25 THE WITNESS: The employees to support

1 FACTS for the pounds shipped under FACTS?

2 THE COURT: Correct.

3 THE WITNESS: Was 163.7.

4 THE COURT: Thank you.

11:44:43 5 THE WITNESS: For 20.8 million pounds.

6 THE COURT: Thank you.

7 BY MS. LUARDE:

8 Q. And so there were how many more employees required
9 while using Business One?

11:44:54 10 MR. STAR: Objection. They haven't set the
11 time frame period.

12 THE COURT: I thought he did.

13 You can -- excuse me, you can cross-examine
14 on that issue.

11:45:01 15 MR. STAR: Fine.

16 BY MS. LUARDE:

17 Q. During -- while you used Business One, you have a
18 calculation of the number of extra employees required.

19 What is that number?

20 A. That is the number of employees that -- that is the
21 drop in number of employees that we would experience if
22 we shipped 19,985,000 pounds with the FACTS productivity
23 level.

24 Q. So what you're stating is that you would have used
25 27 less employees if you were shipping under FACTS than

1 Business One?

2 A. That's correct.

3 MR. STAR: Objection, Your Honor.

4 THE COURT: Objection is sustained.

11:45:56 5 The question is how many employees were
6 there in 2007, 2008, and 2006.

7 Do you have that figure there?

8 MS. LUARDE: Your Honor, if I -- if I could
9 explain.

11:46:09 10 THE COURT: You don't need to explain
11 anything.

12 Do you understand my question, Mr. Reidl?

13 THE WITNESS: I'm not certain because we
14 have people leaving and people being hired.

11:46:18 15 THE COURT: Okay.

16 THE WITNESS: So are you -- you're asking
17 me the exact number that were employed or --

18 THE COURT: You're giving testimony about
19 the number of pounds shipped per employee so you must
20 know how many pounds were shipped and how many employees.

21 THE WITNESS: Yes. And that information is
22 under SAP, the average employment for the year on an
23 annualized basis. We were on it for 25 months.

24 THE COURT: Right.

11:46:49 25 THE WITNESS: Was 184.36.

1 THE COURT: Okay. Then how about what was
2 the --

3 THE WITNESS: Under FACTS, we had an
4 average of 163.7 employees that shipped 5% more pounds.

11:47:06 5 THE COURT: Got you.

6 MR. MILLER: Your Honor, to be clear, you
7 asked about 2006 and the average the witness is
8 testifying to is over a five-year period. So I'm not
9 sure --

11:47:15 10 THE COURT: I did ask 2006.

11 Do you have that figure for 2006?

12 THE WITNESS: The 2006 average was 125,202
13 pounds.

14 THE COURT: No, I'm sorry, the number of
15 employees.

16 THE WITNESS: The number of employees? I'm
17 answering including the equivalent temporaries?

18 THE COURT: I guess.

19 THE WITNESS: Was 186.2.

11:47:41 20 THE COURT: Thank you.

21 BY MS. LUARDE:

22 Q. But, Mr. Reidl, just so we're clear, your
23 calculation of pounds shipped per employee, you're
24 looking at the average number of pounds each employee
11:47:59 25 could ship per year, correct?

1 A. Correct.

2 MR. STAR: Objection. Relevance.

3 THE COURT: Overruled.

4 BY MS. LUARDE:

11:48:05 5 Q. And you compared that average number of pounds
6 shipped per employee on FACTS to the average number of
7 pounds shipped per employee on Business One, correct?

8 A. Correct.

9 Q. And what you determined, comparing those two
11:48:28 10 separate time periods, was that it required an additional
11 27 people while operating under Business One, correct?

12 MR. STAR: Objection.

13 THE COURT: Overruled.

14 A. That's correct.

11:48:45 15 Q. Okay. Let's move on to the second half of this
16 calculation.

17 You also determined the annualized cost for
18 each employee over a period of time, correct?

19 A. Correct.

20 Q. And you came up with a number of what it cost per
21 employee, correct?

22 A. Correct.

23 Q. And you base this number off of figures in your
24 financial records, is that accurate?

25 A. That is accurate.

1 Q. And what is the number that -- the annualized cost
2 for each employee, what is that number?

3 MR. STAR: Objection. Foundation.

4 THE COURT: Overruled.

11:49:31 5 A. That's a combination of the cost for employees in
6 the warehouse, the cost for all the employees in the
7 office, plus the cost of the temporary employees.

8 Q. What is that number?

9 A. For which year or for the average period?

11:49:51 10 Q. The annualized costs per employee, you came up with
11 a number.

12 A. Okay. For the time period, or for a given year?

13 Q. Mr. Reidl, you -- while on SAP Business One.

14 A. The average cost -- annualized cost per employee
15 for all our employees while we were using SAP Business
16 One was \$45,914.

17 Q. And so to calculate the impact on your overhead and
18 to explain that gap between gross and net on this chart,
19 what is the dollar amount of the -- what is the dollar
20 amount and the effect on productivity? What dollar
21 amount does that equate to?

22 MR. STAR: Objection.

23 THE COURT: Overruled.

24 A. \$2,598,000 for that period.

11:51:06 25 MR. STAR: Objection.

1 THE COURT: Overruled.

2 MR. STAR: Move to strike that. There's no
3 foundation to the actual cost --

4 THE COURT: Again, we can go into all of
11:51:11 5 this.

6 MR. STAR: Thank you.

7 BY MS. LUARDE:

8 Q. So it's your testimony that Hodell-Natco suffered
9 losses of \$2,598,173 as a result of an impact on its
11:51:31 10 productivity because of the use of Business One, is that
11 correct?

12 A. That is correct.

13 MR. STAR: Object and move to strike that.

14 THE COURT: Overruled.

11:51:49 15 BY MS. LUARDE:

16 Q. Mr. Reidl, there are also other components that you
17 looked at in analyzing the financials for Hodell, and one
18 of those actually included calculating the out-of-pocket
19 expenses that you incurred in licensing Business One, is
11:52:10 20 that right?

21 A. That is correct.

22 Q. And could you give me the categories that make up
23 your out-of-pocket expenses?

24 A. They're the licensing expenses for SAP Business
11:52:27 25 One, the licensing for the Radio Beacon licenses,

1 maintenance contract for the Radio Beacon license, the
2 maintenance contract for the SAP Business One license,
3 licenses, and the implementation and maintenance expenses
4 from LSi.

11:52:58 5 Q. And, Mr. Reidl, if you'd flip to your binder,
6 Exhibit 606.

7 A. 606?

8 Q. Yes. And if you don't have that in front of you, I
9 can get a copy for you, Mr. Reidl.

11:53:49 10 A. Yeah, I don't have it in front of me.

11 MS. LUARDE: May I approach, Your Honor?

12 THE COURT: You may.

13 MS. LUARDE: Thank you.

14 A. Yeah. Okay.

11:54:30 15 Q. And, Mr. Reidl, could you take a minute and look
16 through that document and then tell the jury what
17 this -- what this is?

18 A. This is a stack of copies of invoices and checks
19 that support the items I discussed earlier on the
20 out-of-pocket costs.

21 Q. And are these documents maintained in the ordinary
22 course of your business?

23 A. Yes, they are.

24 Q. And, Mr. Reidl, if you could turn to Exhibit 622,
25 please.

1 A. Okay.

2 Q. And could you identify what this document is?

3 A. This is -- this is a document prepared by our
4 accounting department at my request to list all of the
11:56:35 5 items related to those out-of-pocket costs, the dates of
6 the posting, and the amount of the transaction, and who
7 was the recipient.

8 Q. And this is a document that comes directly off of
9 your system at Hodell?

10 A. I'm sorry? I could not hear that.

11 Q. And this is a document that came off of your system
12 at Hodell?

13 A. That is correct.

14 Q. And this is just a, if I'm correct, this is a
11:57:14 15 summary of the invoices that are in front of you, is that
16 correct?

17 A. That is correct.

18 Q. And what are the total amount of damages that are
19 direct out-of-pocket expenses related to the Business One
11:57:28 20 failed implementation?

21 MR. STAR: Objection.

22 THE COURT: Well, the characterization of
23 the question? Yes.

24 What does that total?

11:57:38 25 MR. STAR: Thank you.

1 A. The total is \$842,992.62.

2 Q. Thank you.

3 And, Mr. Reidl, as part of the Business One
4 implementation, you also incurred costs with regard to
11:57:59 5 training, testing, and travel?

6 Do you recall that?

7 A. Correct.

8 Q. And what do you mean by "Training, testing, and
9 travel" expenses?

11:58:12 10 A. This is the expense for the people who traveled to
11 Chicago to become trainers. This is basically the
12 train-the-trainers expense.

13 We sent at least two people from every
14 location out of the seven warehouses, plus one person
11:58:34 15 from Milwaukee. And from the Cleveland office we
16 actually sent three or four. So it's a total of about 15
17 people for a one-week period to Chicago, and the cost of
18 their travel, food, lodging, and the salaries for those
19 people during that time.

20 It's a very conservative estimate.

21 Q. And what is that estimate?

22 A. Between 35 and \$50,000. 50,000 is closer to the
23 actual.

24 Q. Okay. And, Mr. Reidl, in addition to the items
11:59:16 25 that we just discussed, Hodell also is looking for the

1 damages suffered for the lost return on investment, is
2 that correct?

3 MR. STAR: Objection.

4 THE COURT: Overruled.

11:59:36 5 Q. You may answer.

6 A. Yes. When a business makes an investment, a
7 capital investment, it expects a return of that
8 investment.

9 Typically, if you get a return on
11:59:51 10 investment in three to four years, it may be feasible to
11 do the project. If it takes longer than that, you
12 typically don't make the investment.

13 MR. STAR: Your Honor, I object. Can we
14 approach?

THE COURT: No. You don't need to.

16 Go ahead.

17 BY MS. LUARDE:

18 Q. And, Mr. Reidl, in fact, SAP advertised that you
19 would receive a return on investment by using SAP
20 Business One. Is that correct?

21 A Correct

22 Q. And did you actually calculate the lost return on
23 your investment?

24 MR. STAR: Objection.

12:00:25 25 A. Yes, I did.

1 THE COURT: Overruled.

2 Q. Mr. Reidl, I'm putting in front of you Exhibit 625.

3 MR. STAR: We object before that even goes
4 up.

12:00:35 5 THE COURT: Because?

6 MR. STAR: May we approach?

7 THE COURT: Yeah.

8 You know what? It's 12:00 o'clock. We
9 probably should go to lunch.

12:00:44 10 What do you think? 1:15, is that okay
11 again? Gives you -- did you try the cafeteria yet,
12 anybody? How was it? Tower City is better? Yes.

Does 1:15 give you enough time? Okay.

14 Keep in mind the admonition. Somebody should be opening
15 the door momentarily.

12:01:06 15 the door momentarily.

16 See you at 1:15.

17 (Jury out)

18 (Side-bar conference had off the record).

19 (Proceedings adjourned at 12:01 p.m.)

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1 WEDNESDAY, JUNE 24, 2015, 1:16 P.M.

2 THE COURT: Okay. Be seated, folks.

3 Good afternoon.

4 THE JURORS: Good afternoon.

13:27:30 5 THE COURT: You may continue.

6 DIRECT EXAMINATION OF OTTO REIDL (RESUMED)

7 BY MS. LUARDE:

8 Q. Good afternoon, Mr. Reidl.

9 A. Good afternoon.

13:27:37 10 Q. Before we go on to the next damage component, I
11 just wanted to clean up one issue on this demonstrative.

12 MS. LUARDE: Your Honor, may I approach?

13 Thank you.

14 Q. Mr. Reidl, can you see on this demonstrative how we
15 have the red and the blue lines coming up and declining
16 shortly before the implementation of SAP Business One.
17 Do you see that?

18 A. Correct.

19 Q. Can you explain that for me?

13:28:32 20 A. Yes. We started experiencing expenses related to
21 the SAP implementation before we actually started or
22 turned the, you know, turned on the power to say.

23 We had to make an investment. The carrying
24 cost for that investment, we had substantial amount of
13:28:58 25 training in 2006. We did testing. And then we did more

1 training.

2 Q. Thank you. And I just want to make sure, I believe
3 this is clear, but this dotted line reflects the actual
4 go-live date on Business One, correct?

13:29:26 5 A. Correct.

6 Q. Thank you.

7 Mr. Reidl, before we broke for lunch, we
8 were just getting started on lost return on investment.

9 Do you recall that?

13:30:03 10 A. Yes.

11 Q. And could you tell me, Mr. Reidl, do you typically
12 calculate your return on investment when you purchase
13 something like an ERP system?

14 A. Yes.

13:30:16 15 Q. And that's something you do in your role as CEO of
16 the company?

17 A. Correct.

18 Q. And I believe you explained prior to lunch, but
19 just so you could refresh for us, what do you mean by
20 "Return on investment"?

21 A. That's the present value of the improvement in
22 after-tax profit measured against the return on the
23 investment itself.

24 Q. And, in fact, did SAP advertise that you would
13:30:58 25 receive a return on investment by using SAP Business One?

1 A. Yes, they did.

2 Q. And, Kim, could you put up Exhibit 38 for me,
3 please?

4 And, Mr. Reidl, we saw this document
13:31:21 5 throughout the course of this trial.

6 Do you recall that?

7 A. Yes.

8 Q. And could you tell me what this -- what this is?

9 A. This is a document by SAP for SAP Business One, and
13:31:40 10 it shows a graph of investment cost and return, improved
11 product -- profitability and it shows a less than a
12 couple years' return; actually a few months.

13 Q. And at the bottom of the page, you see it states,
14 at the very bottom, "The ROI calculator is a tool to help
13:32:11 15 you gauge the cost savings and revenue increases that
16 you'll gain with SAP Business One."

17 Do you see that?

18 A. Yes, I do.

19 Q. And that's what you mean by return on investment,
13:32:22 20 correct?

21 A. Correct.

22 Q. And, Mr. Reidl, did you prepare a calculation for
23 your return on investment?

24 A. I did after-the-fact.

13:32:56 25 Q. And could you describe generally how you performed

1 that calculation?

2 A. I took a look at what the return on investment
3 would be, what kind of cost savings would have to be
4 achieved to provide a return on investment based on the
5 company's cost of capital over that five-year period.

Q. And how much did you calculate Hodell lost as a result of the failed implementation of Business One?

8 MR. STAR: Objection on multiple levels.

9 THE COURT: Overruled.

13:33:34 10 A. \$1.2 million, if it took five years to achieve the
11 return on investment.

12 Q. Mr. Reidl, I'd like to move to the next damage
13 component.

14 You're familiar with a company called PCBC,
13:33:58 15 correct?

16 A. Correct.

17 0. What does that stand for, PCBC?

18 A. Pacific Coast Bolt Corporation.

19 Q. And could you tell me a little bit about who, who
13:34:13 20 is Pacific Coast Bolt Corporation, PCBC?

21 A. That's a company located near Los Angeles,
22 California that is in the fastener distribution business.
23 They serve a number of markets, both geographically and
24 strategically of interest to our company, particularly
25 Waterworks, which is a growth industry in California, and

1 wind power.

2 They do have some manufacturing
3 capabilities to produce stainless fasteners that are used
4 in the wind power industry.

13:34:55 5 Q. And Hodell, could you tell us, are those part of
6 the reasons why you really wanted to acquire PCBC?

7 A. Yes. Among others, it was a very profitable
8 company.

9 MR. STAR: Objection.

13:35:11 10 THE COURT: You really didn't ask him that
11 question yet.

12 Q. I'm sorry. Could you repeat that answer?

13 A. I said strategic --

14 THE COURT: Ask him a question.

13:35:21 15 Q. Okay. You had strategic reasons for acquiring
16 PCBC, is that correct?

17 MR. STAR: Objection.

18 THE COURT: Overruled.

19 A. That is correct.

13:35:27 20 Q. Could you tell me what they were?

21 A. Market expansion into California, expansion into
22 several end-user markets, the wind power and waterworks
23 area, and an expansion in higher grade fasteners. And it
24 would have enabled us to provide sales management
25 coverage for all of California.

1 We currently serve the northern California
2 market from our Reno facility.

3 Q. And historically, could you describe how Hodell has
4 actually grown over time?

13:36:14 5 A. Yes. We've done 13 acquisitions through the year
6 2006 from our inception. That's approximately 1.7
7 acquisitions -- one acquisition every 1.7 years.

8 Approximately a little over two-thirds of
9 our profitability and sales growth comes from the
13:36:43 10 acquisition segments side of our activity.

11 Q. And, Mr. Reidl, you've just described 13 different
12 acquisitions.

13 Were you personally involved in those
14 acquisitions?

13:36:56 15 A. I played the key role in each one of those.

16 Q. And could you tell me what you do in that process?

17 MR. STAR: Objection. Relevancy.

18 THE COURT: Overruled.

19 MR. STAR: He's not here as an expert.

13:37:11 20 A. I played a lead role in the due diligence, which is
21 gathering all information we can on the profitability, on
22 the products, the customers, the markets served, the
23 actual facilities, their -- the condition of their
24 inventory, the health of their customer base.

13:37:34 25 Basically what I'm talking about there is

1 the, first of all, the growth rate that the company
2 experienced over the previous five years; the -- any
3 large customers lost during the last couple of years; any
4 large customers added during the last couple of years to
13:37:52 5 get a feel for how they're doing.

6 Q. So you take a pretty hard look at each of these
7 acquisitions, correct?

8 A. Yes, we do. We look at all their financial
9 records, including their tax returns.

13:38:04 10 Q. And since you started using SAP Business One, how
11 many acquisitions have you had at Hodell?

12 A. Zero.

13 Q. And with regard to PCBC, where were you in the
14 process when you started using Business One?

13:38:38 15 MR. STAR: Objection. Foundation.

16 THE COURT: Overruled.

17 A. After the signing of the letter of intent, we
18 started after the due diligence work, we worked on the
19 development of the purchase agreement, and that was to
20 close already set up for April 30th, 2009. We had agreed
21 to the seller's redline changes to the final purchase
22 agreement. We were ready to sign.

23 Q. And, Mr. Reidl, if I direct your attention to
24 Exhibit 601. And, Kim, that would be Page 2 of that
13:39:28 25 document.

1 A. Okay.

2 Q. And, Mr. Reidl, you just discussed the asset
3 purchase agreement in your comments.

4 Is this what you were referring to?

13:39:55 5 A. This is the e-mail from the owner, Mr. Leroy
6 Gardner, on his final comments, and attached was the
7 asset purchase agreement with their redline markups.

8 Q. Okay. And just so it's a little easier,
9 Mr. Reidl --

13:40:22 10 MS. LUARDE: May I approach the witness?

11 Thank you.

12 Q. And, Mr. Reidl, is that the asset purchase
13 agreement that you were discussing?

14 A. Correct.

13:40:48 15 Q. And how long is that document?

16 A. 53 pages.

17 Q. Okay.

18 A. That's with the red-lining.

19 Q. Okay. So what was left after this red-lining
20 process, Mr. Reidl?

21 A. I'm sorry?

22 Q. After this red-lining process, what was left to do
23 with PCBC to finalize the deal?

24 A. Sign, have it -- well, we had to have our attorney
25 print the final document with the red lines accepted, and

1 we were then going to schedule a signing in Los Angeles
2 for April 30th.

3 Q. But this transaction did not go through, is that
4 correct?

13:41:51 5 A. That is correct.

6 Q. What happened?

7 A. With the loss in productivity, the extra investment
8 in a new replacement software package, and the increased
9 carrying cost of our debt, we ran out of cash.

13:42:16 10 Q. And so you were not able to finalize the deal?

11 A. That is correct.

12 Q. And as part of the due diligence, you reviewed
13 multiple documents from PCBC, is that correct?

14 MR. STAR: Objection. Hearsay.

13:42:42 15 THE COURT: You can answer that yes or no.

16 THE WITNESS: I can answer?

17 A. Yes. We reviewed four years of tax returns,
18 internal financial statements. We did a week's worth of
19 due diligence at their facilities. In -- as I enumerated
20 before, we looked at their inventory, the facility, the
21 lease arrangements, the ability to extend the lease. We
22 looked at the employees, their capabilities, the talents
23 involved.

24 We analyzed their customer base, the turns
25 on inventory, the condition of their equipment. I played

1 a lead role. There were five of us there for a week.

2 Q. And, Mr. Reidl, if I could direct your attention to
3 Exhibit 628. And you'll see up on the screen will be the
4 first page.

13:43:45 5 MR. STAR: Object. We object to this, Your
6 Honor. It's hearsay.

7 THE COURT: Objection sustained.

8 BY MS. LUARDE:

9 Q. Mr. Reidl, did you prepare a calculation of losses
13:44:00 10 sustained by Hodell as a result of the failure to acquire
11 PCBC?

12 A. I did.

13 MR. STAR: Objection. Calls for an expert
14 opinion.

13:44:13 15 THE COURT: Objection sustained.

16 BY MS. LUARDE:

17 Q. And, Mr. Reidl, with regard to the 13 acquisitions
18 that you handled, was it your practice to determine how
19 profitable that acquisition would be for Hodell?

13:44:23 20 A. We did that with every single acquisition, looking
21 at their history and then the projection under our own
22 operation.

23 Q. All right. And, Mr. Reidl, in your role as CEO at
24 Hodell, did you do that same calculation for PCBC?

13:44:49 25 A. I did.

1 MR. STAR: Objection. Calls for a legal
2 opinion.

3 THE COURT: Objection sustained.

4 Q. Mr. Reidl, I'd like you to turn to the next damage
5 calculation, which is increase interest expense on debt.

6 Could you tell me what you mean by that?

7 A. That's the increase in interest as a result of the
8 SAP Business One implementation, looking at what our
9 interest cost was relative to sales level before and what
0 it was afterwards.

11 Q. And could you tell me why -- why did you have these
12 increased costs?

13 MR. STAR: Objection. Foundation.

14 THE COURT: Overruled.

13:45:55 15 A. We had increased debt resulting from the
16 productivity effect. We had increased debt fro
17 replacement software cost.

18 o. And --

19 A. And we had an increase in our borrowing -- the
13:46:21 20 premium over the base borrowing rate, based on the fact
21 that we were at the low end of our covenant compliance.

22 Q. And, Mr. Reidl, I'm going to put in front of you
23 Exhibit 607, which are -- we looked at before. Those are
24 your audited financial statements, is that correct?

13:46:45 A. That's correct.

1 MS. LUARDE: May I approach, Your Honor.

2 THE COURT: You may.

3 MS. LUARDE: Thank you.

4 BY MS. LUARDE:

13:47:09 5 Q. And, Mr. Reidl, did you perform a calculation to
6 determine your increased cost due to interest on debt?

7 MR. STAR: Objection.

8 THE COURT: Overruled.

9 A. Yes, I did.

13:47:29 10 I -- I compared interest cost at a given
11 level of sales for the period before, three years before
12 SAP implementation, and the first full year not on SAP.
13 And the interest cost as a percent of sales for the
14 three-year period before and the immediate one year
15 after, when applied to the sales numbers, indicated the
16 excess interest we had to carry under the SAP use.

17 Q. And what was that number?

18 MR. STAR: Objection.

19 THE COURT: Overruled.

13:48:13 20 A. Five -- it was between 498 and 574,000, \$550,000.

21 Q. And you relied on the financial documents before
22 you in preparing that calculation, is that correct?

23 A. That is correct.

24 Q. Is the failed Business One implementation still
13:48:39 25 affecting Hodell-Natco today?

1 MR. STAR: Objection.

2 THE COURT: Objection sustained.

3 Q. Mr. Reidl, you testified earlier that there was a
4 decrease in productivity at Hodell from the 2002-2006
13:49:02 5 time period as compared to '07 to '08.

6 Do you recall that testimony?

7 A. Yes, I do.

8 Q. What changed at Hodell between those two time
9 periods?

13:49:11 10 A. SAP Business One.

11 Q. And are you aware of anything else that would have
12 impacted Hodell's productivity during this time?

13 A. No.

14 Q. Well, what about the economy? Wouldn't that have
15 an effect on productivity?

16 A. No, because I was looking at the pounds we actually
17 shipped.

18 Q. And so are you saying that the economy doesn't have
19 anything to do with your efficiency?

20 A. It has nothing to do with the productivity.

21 Q. And, Mr. Reidl, we also looked at a big stack of
22 invoices.

23 Do you recall that?

24 A. Yes.

13:49:54 25 Q. And I'm -- that was Exhibit 606.

1 And, Mr. Reidl, some of these invoices were
2 not paid to SAP, and could you explain to the jury why
3 some of these invoices are not SAP payments?

4 A. Because we purchased SAP Business One through LSi,
13:50:27 5 a channel partner.

6 MS. LUARDE: Your Honor, may I approach on
7 an issue?

8 THE COURT: You may.

9 MS. LUARDE: Thank you.

10 13:50:50 (Side-bar conference had off the record).

11 MS. LUARDE: Okay. Mr. Reidl, that's all I
12 have for you at the moment.

13 Thank you.

14 THE COURT: Thank you.

15 13:51:53 You may cross-examine.

16 MR. STAR: Thank you, Your Honor.

17 CROSS-EXAMINATION OF OTTO REIDL

18 BY MR. STAR:

19 Q. Good afternoon, Mr. Reidl.

20 A. Good afternoon.

21 Q. Sir, let's begin talking about some of the supposed
22 damages numbers that you were talking about, and then
23 we'll later get through some of the other topics that you
24 started with.

25 13:53:49 The first thing that you talked about was

1 what you, as I understood, you said was an increased
2 overhead cost you said you had during the time you ran
3 Business One, is that correct?

4 A. Correct.

13:54:06 5 Q. And as I understood you, you offered a calculation
6 where you suggested that prior to running Business One,
7 you had something like 163.7 employees, but during the
8 time you ran Business One for two years, you had 184
9 employees, is that what you said?

13:54:29 10 A. I don't have that slide in front of me, but --

11 Q. Let's make sure you've got the documents?

12 MR. STAR: Do you mind if I approach, Your
13 Honor?

14 THE COURT: Go ahead.

13:54:41 15 THE WITNESS: Those are from our --

16 MR. STAR: Yeah, you were referring to one
17 of them, right, for your numbers? Do you have Exhibit 25
18 up here?

19 MS. LUARDE: Greg, do you need it?

13:54:51 20 MR. STAR: Yes, please.

21 BY MR. STAR:

22 Q. This was the one you were referring to for your
23 numbers?

24 A. Correct.

13:55:02 25 Q. So your calculation was that you had 163.7 people

1 during the period you ran FACTS, but while you ran
2 Business One for two years, you had 184.36, is that what
3 you said?

4 A. Correct.

13:55:25 5 Q. Now, Judge Nugent asked you some questions about
6 how many actual employees you had each year where you
7 were running FACTS or Business One. Do you remember
8 that?

9 A. Can you refresh my memory?

13:55:40 10 Q. Sure. Let's just make sure we all understand.
11 When you say you had 163.7 people while you
12 were running FACTS before Business One, to get to that
13 number, you've actually done an averaging over a period
14 of five years, right?

13:55:58 15 A. That is correct.

16 Q. Okay. The last full year that you ran FACTS was
17 what year, sir?

18 A. I averaged it through February of 2007.

19 Q. Sir, sorry, just to be clear, what was the last
13:56:14 20 full year that Hodell ran the FACTS system before you
21 went to Business One?

22 A. 2006.

23 Q. Okay. Tell us, sir, how many employees did Hodell
24 have in 2006?

13:56:28 25 A. 186.2.

1 Q. Okay. And how many employees did Hodell have in
2 2007?

3 A. 184.3.

4 Q. And in 2007, you switched from FACTS to Business
13:56:44 5 One, correct?

6 A. Correct.

7 Q. So you'd agree with me from the last full year that
8 you ran FACTS in 2006 to the first year you began running
9 Business One in 2007, you actually decreased by almost
13:57:03 10 two full people over the course of the year, right?

11 A. That is correct.

12 Q. Okay. And how many employees did you have in 2008?

13 A. 184.3.

14 Q. In 2008 was the number?

13:57:23 15 A. Pardon? 2008 you asked me?

16 Q. Yes, sir.

17 A. Correct.

18 Q. Okay. So again, well, 2008, that was the only
19 calendar year you actually ran -- the full calendar year
13:57:36 20 you actually ran Business One, correct?

21 A. Correct.

22 Q. I'd like to put a demonstrative up and have you go
23 through it with me if you don't mind.

24 I'm happy for you guys to see it first if
13:57:58 25 you'd like to.

1 MS. LUARDE: Sure.

2 THE COURT: Are you folks marking any of
3 these demonstrative exhibits?

4 MR. STAR: I may. I may well mark these as
13:58:08 5 exhibits, Your Honor.

6 THE COURT: Okay. Because sometimes we say
7 at the end of the case, you see a lot of these
8 demonstrative exhibits, you don't get them in the back
9 because they just mark them for the purpose of the
13:58:18 10 witness.

11 Sometimes you get them; sometimes you
12 don't. Sometimes it's up to the lawyers; sometimes it's
13 up to me.

14 BY MR. STAR:

13:59:11 15 Q. Mr. Reidl, are you able to see this, sir?

16 A. Yes, I am.

17 Q. It's on the screen as well? Okay, great.

18 Sir, you'd agree with me that in the year
19 2002, you ran the FACTS software, correct?

20 A. In 2002, correct.

21 Q. And from your own business records, you had gross
22 sales of \$24.8 million?

23 A. Correct.

24 Q. And you had a total labor force, including both
13:59:38 25 full-time and temporary employees, of 141.3 people,

1 right?

2 A. Correct.

3 Q. Okay. And if you look at the numbers we have for
4 2003, 2004, 2005, 2006, those are years that you ran the
13:59:52 5 FACTS software, correct?

6 A. 2002 through 2006, we were in FACTS.

7 Q. Okay. And between the period of 2002 through the
8 end of 2006, Hodell actually increased its labor force by
9 over 40 total people, right?

14:00:12 10 A. Correct.

11 Q. In fact, from 2002 you went from having 141.3
12 people to having 186.2 at the end of 2006, correct?

13 A. Correct.

14 Q. And you'd agree with me that those increases in
14:00:32 15 employees happened irrespective of Business One; you were
16 not running Business One, right?

17 A. Correct.

18 Q. So Business One, we can agree --

19 A. With one minor exception.

14:00:44 20 Q. Go ahead.

21 A. Okay? In 2006, we did extensive training and
22 testing, okay, which means that we were adding work to
23 the existing force.

24 Q. I'm only asking about the number of people, okay?

14:01:02 25 We'll get into --

1 A. Correct.

2 Q. -- some of the other details later.

3 We can agree, though, that the number of
4 people, the change from 2002 to the end of 2006, was due
14:01:13 5 to factors that had nothing to do with Business One or
6 SAP, correct?

7 A. Could you repeat that question, please?

8 Q. Sure. Let's just break it down, okay?

9 We agree that in 2002, for instance, you
14:01:27 10 had 141.3 people?

11 A. That I agree with.

12 Q. And then each year you moved up; you went to 142.4
13 in 2003? Do you see that?

14 A. I -- yes. Okay.

14:01:43 15 Q. And that change had nothing to do with Business
16 One, of course?

17 A. Correct.

18 Q. And then you went from 142.4 to 160 people?

19 A. Correct.

14:01:51 20 Q. In 2004?

21 A. Correct.

22 Q. That change had nothing to do with Business One?

23 A. Correct.

24 Q. And then from '04 to '05, you added 8.8 more
14:02:02 25 people; that also had nothing to do with Business One,

1 right?

2 A. A certain amount of our time was already devoted to
3 the implementation.

4 Q. I --

14:02:13 5 A. In '05.

6 Q. Are you saying --

7 A. They were already --

8 Q. Sorry, go ahead.

9 A. LSi was doing development, and we were being asked
14:02:20 10 to answer some questions and update, being updated on
11 their progress.

12 Q. Okay. I understand what you're saying is that you
13 spent some of your time perhaps interacting with the
14 folks at LSi and IBIS.

14:02:34 15 My question's different, though. We're
16 talking about actually bringing, physically bringing a
17 new person on board.

18 You went from 160 people in '04 to 168.8 in
19 2005. That increase of 8.8 people had nothing to do with
14:02:50 20 SAP or Business One, we can agree on that, right?

21 A. That's close.

22 Q. Well, can you identify a person that you hired
23 because of Business One?

24 A. No. We have a certain amount of work to do. When
14:03:03 25 you add some tasks that don't have to do with the sales

1 currently for some future implementation of software,
2 that takes time that's not being devoted to the sales
3 that are occurring.

4 Q. We're going to talk about -- we're going to talk
14:03:20 5 about the amount of time that Hodell's workforce actually
6 spent working.

7 A. Sure.

8 Q. What I'm asking you here is simply, you'd agree
9 that your total employees, those are the actual people
14:03:29 10 that work for you, that show up and work in your
11 warehouse or in your office, yes?

12 A. Yes.

13 Q. And we can agree that this change of adding 8.8
14 people from '04 to '05, you didn't add anybody because of
14:03:44 15 Business One, right?

16 A. That is correct.

17 Q. Thank you.

18 And the same is true from '05 to '06, you
19 didn't add anybody because of Business One?

14:03:53 20 A. No, that's not -- no longer correct.

21 Q. Well, identify for me right now even one particular
22 person that you hired during the period of '05 to '06
23 because of Business One.

24 A. Okay. We didn't provide any exhibits. We hired 33
14:04:08 25 people during that year.

1 Q. You had an acquisition that you made that year,
2 right?

3 A. Yeah. Yeah. In --

4 Q. Correct?

14:04:13 5 A. In '07 we hired 33 people during the time of
6 this --

7 Q. Sir, let's stick with where we are, okay?

8 A. Okay.

9 Q. Can you see this well enough?

14:04:23 10 A. I can see it, yes.

11 Q. Okay. And we have it on the screen in front of
12 you?

13 A. Yes.

14 Q. You testified earlier that in 2006, you had an
14:04:37 15 acquisition, brought in more people through an
16 acquisition.

17 That had nothing to do with Business One,
18 correct?

19 A. Correct.

14:04:42 20 Q. Okay. Thank you.

21 So an increase in your head count between
22 '05 and '06 happened, but it didn't have anything to do
23 with Business One; you weren't even running that
24 software, yes or no?

14:04:56 25 A. That's not correct.

1 Q. Identify for us right now even one person by name
2 that you hired between '05 and '06 because of Business
3 One.

4 A. We have a workload. If work needs to get done, or
14:05:13 5 if it's in the warehouse or in the office, you then add
6 people.

7 I don't say it's we hired you because we
8 have to devote some of our time to the implementation or
9 training of SAP Business One.

14:05:28 10 That's not how you function.

11 Q. In 2006, sir, you were not running SAP Business
12 One, were you?

13 A. In 2006, we weren't running it, but we were
14 testing.

14:05:36 15 Q. You were testing?

16 A. And training, lots of training.

17 Q. Sir, we've been through this.

18 You don't have a single exhibit, a
19 document, a payroll stub, a list of employees, anything
14:05:47 20 like that where you can identify for us even a single
21 person by name that you hired because of Business One,
22 can you?

23 A. Because of Business One? For what period?

24 Q. Any period.

14:06:03 25 A. Any period?

1 Q. You're not able to identify even a single person by
2 name, are you?

3 A. We didn't submit those exhibits, but we --

4 Q. Thank you.

14:06:12 5 A. -- hired 33 people in '07, from March to the end of
6 the year, and we hired 36 people in '08.

7 Q. Well, let's look at your numbers. It's right there
8 on the chart.

9 A. We had turnover -- okay.

14:06:24 10 Q. Sir, let's look at the numbers. Let's look at the
11 numbers.

12 You've told this jury today that to get to
13 your increased overhead number, which I think you told
14 them was something like \$2.6 million, you had two
14:06:38 15 variables, right?

16 They -- well, let me break it down for you.

17 A. Yeah.

18 Q. You told this jury that you had 27.6 additional
19 people and then you multiplied that by, I think what you
14:06:51 20 said was \$45,913 per person to come out to 2.6 million?

21 A. No, I didn't say that. What I said was I found out
22 the monthly cost for that 45,000, so you get the one
23 month cost times the number of extra employees, times the
24 25 months.

14:07:11 25 Q. Okay.

1 In any event, we'll break that down
2 further. To come out to any number, you have to tell
3 this jury that you actually had extra employees, don't
4 you? That's part of your formula?

14:07:26 5 A. We had the same, almost the same number of people
6 to ship a lot fewer pounds. Productivity on our
7 operation.

8 Q. Sir --

9 A. -- is measured by pounds per employee per year.
14:07:40 10 We've done that forever.

11 Q. Let me go back. I am trying to find out.

12 Are you telling this jury right now as you
13 sit there that Hodell actually hired 27.6 additional
14 people, or are you willing to concede that you did not
14:07:54 15 hire anybody additionally? It's right there in your
16 records.

17 A. Let me restate what I said.

18 Q. Sir. I just need an answer to my question.
19 Which is it? Did Hodell actually hire
20 people or did you not actually hire people?
14:08:09

21 A. We hired people.

22 Q. Who are they?

23 A. I don't have them on top of my head. We hired 33
24 people during the period March 1st to the end of 2007,
14:08:25 25 and we hired 36 people January 1st to December 31st,

1 2008. And we hired four people in the first three months
2 of '09.

3 Q. Sir, do you remember we discussed this at your
4 deposition back in February of 2012?

14:08:50 5 A. Yeah.

6 Q. Okay.

7 MR. STAR: Do we have a copy of his
8 transcript?

9 A. Okay.

14:09:23 10 Q. Sir, go to Page 423, please. Actually, I'm sorry,
11 start on Page 422, Line 15?

12 A. 423?

13 Q. 422 first, Line 15.

14 A. Okay.

14:09:49 15 Q. I asked you the question: "Now, can you pinpoint
16 any human beings that you added because of the SAP
17 implementation and problems?"

18 Your answer: "I just look at the total
19 employment for a given pound of sales.

20 "Question: Okay. So do you have a list
21 someplace of, well, this person we had to hire because of
22 bad productivity?"

23 Your answer was no.

24 Do you see that?

14:10:16 25 A. Can you point me to the line number?

1 Q. Sure. I'm between Lines 15 and 23 on Page 422.

2 A. Okay.

3 Q. I read that correctly, didn't I?

4 A. Could you read it again?

14:10:32 5 Q. Sure. I asked you: "Can you pinpoint any human
6 beings that you added because of the SAP implementation
7 and problems?"

8 Your answer: "I just look at the total
9 employment for a given pound of sales.

14:10:48 10 "Question: Do you have a list someplace of
11 well, this person we had to hire because of bad
12 productivity?

13 "Answer: No."

14 Do you see that?

14:10:57 15 A. That is correct, I don't have the list, but we
16 hired --

17 Q. Sir, and I asked you those questions over three
18 years ago in 2012, right? February, 2012 we went over
19 that?

14:11:09 20 A. Correct.

21 Q. And in the last three years, you've never come up
22 with a list, you've never come up with a single name, a
23 payroll stub or anything of any person that you believe
24 you hired, true?

14:11:26 25 A. We have not submitted it to you. I have such a

1 list.

2 Q. And then I asked you -- go to Page 423. Go to
3 Page 423, please. I'm sorry. Did I just hear you say
4 that you do have a list?

14:11:43 5 A. Yes. I don't have it with me.

6 Q. Well, I --

7 A. But --

8 Q. Sir, go back to the question on 422.

9 "Question: Do you have a list someplace?"

14:11:54 10 "Answer: No."

11 A. At that time I did not.

12 Q. So you've since created a list, but you didn't
13 bother to give it to us?

14 A. I asked our HR department, because you asked this
15 question, to see --

16 Q. Sir, my question -- my question is a yes or no.

17 You were asked about a list, but you
18 haven't given us a list, have you?

19 A. That is correct.

14:12:05 20 Q. Go to Page 423, Line 6.

21 "Question: Okay. But no specific person
22 or position that you can point to and say we had to hire
23 this person because of SAP, is that correct?"

24 Your answer: "Not from this information."

14:12:40 25 "Question: I'm talking about from any

1 information?

2 "Answer: Okay."

3 A. Sir, you're going too fast.

4 Q. I'm sorry.

14:12:48 5 A. I don't even know what line you're on.

6 Q. 423, Line 6 I started at. Shall I do it again?

7 A. Yes.

8 Q. "Question: Okay. But no specific person or
9 position that you can point to and say we had to hire
10 this person because of SAP, is that correct?"

11 Your answer: "Not from this information.

12 "Question: Well, I'm talking about from
13 any information now."

14 Your answer: "Okay. We may have somewhere
15 said we've got to add a couple people in the warehouse,
16 we're not keeping up."

17 That was your answer back then, wasn't it,
18 sir?

19 A. That's what it says here.

14:13:28 20 Q. And you haven't even given us the names of the
21 couple of people that you think you may have had to add
22 in the warehouse because of Business One, have you?

23 A. Could you ask that question again?

24 Q. You've not even given us the names or payment
14:13:46 25 information or dates of hire or any personnel information

1 for even the couple of people that you think may have
2 been added in the warehouse because of Business One; yes
3 or no?

4 A. That's an answer, a net number of people we hired.
14:14:05 5 We always have some people terminating.

6 Q. Sir, yes or no, have you produced a single record
7 in the eight years, seven, eight years we've been
8 litigating this case, that identifies in any way, shape,
9 or form even these couple of people that you believe may
14:14:26 10 have been hired in the warehouse because of Business One?

11 A. We have not submitted it.

12 Q. Okay. And you came to a total figure of increased
13 overhead costs because of so-called extra employees who
14 you can't identify, and you came out to a number of 2.6
14:14:47 15 million, right?

16 A. You -- that's -- you're making a statement and a
17 question.

18 Q. Is that what you came out to? Was that what the
19 number was that you told the jury, 2.6 million?

20 A. I said the productivity --

21 Q. Sir, did you tell the jury \$2.6 million because of
22 what you called increased overhead due to extra
23 employees, yes or no?

24 A. Yes.

14:15:08 25 Q. And from all that we've gone through, the most

1 specific that you've ever been able to get was back at
2 your deposition in February, 2012, where you said you
3 might have had to add a couple people in the warehouse.

4 You didn't pay those couple people a total
14:15:25 5 of \$2.6 million, did you; yes or no?

6 A. We're talking about the number --

7 Q. Yes or no?

8 A. That is an absurd question.

9 Q. Because it didn't happen, did it? Did it?

14:15:43 10 A. We hired --

11 Q. Did it happen or did it not happen?

12 A. What?

13 Q. Did you actually hire anybody in your warehouse?

14 A. Yes, we did hire people in the warehouse.

14:15:52 15 Q. And you agreed with the numbers we've got there on
16 the demonstrative, right? Those are accurate employment
17 statistics for Hodell for the period of 2002 through
18 2008?

19 A. Correct.

14:16:09 20 Q. Okay. Sir, we've gone through this a bunch of
21 times, and you've just said again you actually hired
22 people, but let's just be clear.

23 I'll just do it again. You can't even give
24 us a single name, even though you've been litigating this
14:16:33 25 case since 2008, you can't even tell us the name of a

1 single person that you hired?

2 A. No, I didn't say that.

3 Q. You've never given us a record, you've never given
4 us a name, you've never given us a date of hire, have
14:16:46 5 you?

6 A. I haven't given you the record. You asked another
7 question. I can't name a single person.

8 Q. You've never identified a single person before,
9 have you?

14:16:54 10 A. That is correct.

11 Q. Okay. Let alone 26, 27.6 additional people, you've
12 not identified them, have you?

13 A. I'm sorry, I couldn't make out what you said.

14 Q. You've not identified the 27.6 additional people
14:17:12 15 you claim you had to hire, have you?

16 A. We're talking about extra people we had to ship
17 fewer pounds.

18 Q. Sir, my question was simple.

19 I think we can agree you have never
20 identified the names, dates of hire, payment information,
21 or anything about any of these so-called 27.6 additional
22 people; it just hasn't happened, has it?

23 A. It has happened.

24 Q. You've produced to us that information?

14:17:54 25 A. No. No. But you said you can't prove any --

1 Q. That is not what I said.

2 A. Okay.

3 Q. I need you to -- I asked you if you have identified
4 that information. I think it's established that you
14:18:04 5 haven't.

6 We can agree on that, right?

7 A. Say that again, please.

8 Q. We can agree that you have never, even throughout
9 your testimony this morning, identified any information
14:18:20 10 at all about even a single one of the supposed 27.6
11 additional people you say you had to hire, right?

12 A. I said we had them employed to ship fewer pounds.

13 Q. You're just refusing to answer my question? I'm
14 asking you very specifically. This is very simple, sir.
14:18:46 15 I'll try it just one more time and see if we can get an
16 answer.

17 You can agree with me that you have never,
18 even today, identified a single bit of information about
19 any one of the supposed 27.6 additional people you claim
14:19:02 20 you hired because of Business One? We can agree on that,
21 right?

22 A. Not in the way you're asking it.

23 Q. Okay. You talked about your supposed annual cost
24 per employee. Do you remember that?

14:19:46 25 A. Yes.

1 Q. And I think the number you came out with was
2 \$45,914 per employee, is that what you came out to, sir?
3 A. Correct.

4 Q. And to get to the ultimate figure of 2.6 million
14:20:09 5 that you provided to the jury, you did a calculation,
6 right?

7 A. Correct.

8 Q. And let's just establish something, you're not a
9 damages expert, right?

14:20:22 10 A. That is correct.

11 Q. You're not an economist?

12 A. I'm not an economist.

13 Q. Your training, education, does not include training
14 as an accountant or anything like that, right?

14:20:41 15 A. No, I never said that. I had accounting training.

16 Q. I didn't say you said it. I'm just asking you to
17 confirm it, sir.

18 Am I right that you have no formal
19 education as an accountant?

14:20:59 20 A. I'm not a formal accountant.

21 Q. Thank you.

22 I'd like to find out how exactly you came
23 out to the number of 45,000.

24 Am I correct that what you did was you took
14:21:53 25 your total labor and staff cost and divided it, simply

1 divided it by the total number of people that you had?

2 A. I'm sorry, could you say that more slowly?

3 Q. Sure. I'm trying to figure out, so the jury
4 understands, how you came to the number of \$45,000 as
14:22:18 5 being your average cost per employee, okay?

6 A. Correct.

7 Q. What I understand, and you tell me if I've got this
8 right or if I have it wrong, what I understand you to
9 have done was to take your total cost for employees and
14:22:33 10 everybody else, yourself and your son Kevin and Mr. Rex
11 and so on, you took all of those costs, that total, and
12 you simply divided it by the total number of people, is
13 that right?

14 A. Averaged over the time period.

14:22:47 15 Q. Averaged over the time period?

16 A. Yes.

17 Q. So the \$45,000 figure that you came out with was
18 not even an average cost for the supposed 27.6 additional
19 people, it was an average cost for everybody who works at
14:23:07 20 Hodell, including you?

21 A. Correct.

22 Q. Okay. And how much do you make a year, sir?

23 A. Am I required to say that?

24 MS. LUARDE: Objection.

14:23:19 25 THE COURT: Overruled.

1 A. Okay. 120,000 approximately.

2 Q. Is that salary or total compensation?

3 MS. LUARDE: Objection.

4 THE COURT: Overruled.

14:23:29 5 A. That's my salary, total compensation.

6 Q. Okay. And was that the same number in 2007 and
7 2008, sir?

8 A. Boy, probably, but I -- I don't remember exactly
9 how much I made then.

14:23:46 10 I took a pay cut in '09 of 20%, I believe,
11 so it would have been a little more.

12 Q. Back in 2007 and 2008, how much on average did you
13 pay a person who worked in your warehouse, for instance?

14 A. I'd have to -- the backup sheets for this document,
15 the Schedule 24, provide the warehouse employment and the
16 warehouse cost is on here. I could calculate it.

17 Q. Well, your Exhibit 24, do you have it in front of
18 you, sir?

19 A. I don't have it in front of me.

14:24:24 20 MR. STAR: Can we give him another copy?

21 Q. Instead of trying to do a calculation which is
22 going to take us too much time, let me just try to cut to
23 the chase.

24 A. Can you?

14:24:46 25 Q. Yeah. Let me try to cut to the chase.

1 We can agree that you, when you made the
2 salary that you indicated, were making more than what you
3 paid people who worked in the warehouse, correct?

4 A. Correct.

14:24:56 5 Q. Okay. Yet, when you gave the calculation to the
6 jury here of \$2.6 million, you took the supposed 27.6
7 additional employees who you haven't identified and you
8 multiplied them by your total average costs, including
9 what you and other executives were paid, right?

14:25:17 10 A. Correct.

11 Q. So you've made no effort whatsoever to even
12 identify the 27.6 people, right? We've been through
13 that?

14 A. I looked at the --

14:25:33 15 Q. Sir?

16 A. I don't have specific names.

17 Q. Thank you. Nor did you pull out specific pay
18 information for those people to tell us actually what
19 amount you may have even paid those people who you're now
20 telling the jury were hired because of Business One,
21 right?

22 A. I used the average cost per employee. They're all
23 required to run the company.

24 Q. I'll keep at it then.

14:26:04 25 Let's be clear on what you're telling this

1 jury. You're telling this jury you hired additional
2 people, right?

3 A. Correct and --

4 Q. Sir, I'm about to --

14:26:21 5 A. We had to hire people to replace people that left
6 during this period.

7 Q. You're saying -- sir --

8 A. And the net result was --

9 Q. Sir, that's not responsive to any question I asked.

14:26:29 10 You're saying you hired additional people
11 but you're not telling us who they were or what you paid
12 those additional people, correct?

13 A. I had not presented that document to you.

14 MR. STAR: Your Honor, may I approach?

14:26:47 15 Your Honor?

16 THE COURT: The witness or up here?

17 MR. STAR: You.

18 (Side-bar conference had off the record)

19 THE COURT: Remember the O.J. Simpson case?
20 You all remember. Yeah, who remembers the case? Oh,
21 really?

22 Well, okay, you're showing your age. Yeah,
23 I know.

24 See, it happens all the time, they're at
25 the side, and the Judge steps out, that was a very bad

1 exposition for the justice system, in particular the
2 judiciary, demonstrating the Judge was clueless. And
3 that was bad. That is bad for the system.

4 But we do have side-bars for a reason. We
14:31:52 5 talk about legal issues, and rather than adjourn Court
6 and do it in open Court, we do it at the side. So we're
7 talking about legal things and not factual things, so
8 it's not for your concern.

9 So if you overhear something or people get
14:32:05 10 animated, that's natural how that happens.

11 So when I was a lawyer, I always used to
12 get a kick out of this so that's why I like saying it as
13 a Judge because the Judge used to always tell the jurors,
14 "Now, we're not trying to hide anything from you." And
14:32:18 15 as a lawyer, I used to kind of scratch my head, that's
16 exactly what we're doing.

17 So we are hiding the law from you, but so
18 don't be concerned about it. All right?

19 You may continue your questioning.

14:32:30 20 MR. STAR: Thank you, Your Honor.

21 BY MR. STAR:

22 Q. Mr. Reidl, just to round out this exhibit, you
23 agree with me that the numbers up on this exhibit are
24 accurate, correct?

14:32:41 25 A. The gross sales are correct and the total

1 employment is correct.

2 Q. Okay.

3 MR. STAR: We'd like to mark this as the
4 next Defendant's exhibit. I think it's 909. Do you mind
14:32:58 5 writing on that, Alex, Joe?

6 BY MR. STAR:

7 Q. Sir, back to some of your testimony from earlier,
8 you testified that in your view, your records show that
9 Hodell shipped fewer pounds per hour worked or total
14:33:29 10 pounds over the course of the time you ran Business One
11 than in prior years, right?

12 A. No, I didn't state that.

13 Q. Okay.

14 A. I said per employee.

14:33:38 15 Q. Per employee.

16 A. The -- the hours that are on the Exhibit 24 are
17 just for the warehouse hours.

18 The total number of employees is listed on
19 here.

20 Q. Okay.

21 A. Other than the temps.

22 Q. So your view is you shipped fewer, fewer pounds of
23 product per total employee hours worked while you ran
24 Business One than you had in the prior years?

14:34:06 25 A. That is correct, pounds.

1 Q. But, you agree you actually brought more money in
2 the door in 2008 than in any other year; your gross sales
3 were the highest, correct?

4 A. The gross sales in 2008 were higher.

14:34:21 5 Q. Okay. You'd agree with me that Hodell, like any
6 other company of its kind, will only actually ship a
7 pound of product if a customer places an order for a
8 particular product, right?

9 A. Correct.

14:34:38 10 Q. I mean, it's very basic. You're not just shipping
11 product out hoping somebody's there at the other end.
12 You only ship product out when a customer demands that
13 product, right?

14 A. Correct.

14:34:48 15 Q. So we can then agree that the total number of
16 pounds of product that you ship depends on customers'
17 demand for your products, right?

18 A. Correct.

19 Q. And the pounds of products, let me just step back.
20 You've testified that Hodell has 40,000
21 different products, right?

22 A. Correct.

23 Q. And then you -- some of those you repackage in
24 various ways so that at the end of the day, you have
14:35:23 25 something like 150,000 different items in your -- on your

1 shelves in your warehouse, right?

2 A. That's correct.

3 Q. Okay. And we can agree that different items might
4 weigh the same, but one product could cost a customer
14:35:47 5 more than the other, right?

6 A. That is correct.

7 Q. Okay. We can also agree that depending on the
8 material, the kind of steel, for instance, that is in a
9 particular fastener, one of your inventory items may
14:36:04 10 weigh less than another but be more expensive to the
11 customer, correct?

12 A. If it's a steel product, it's going to be very
13 closely the same weight per the physical dimensions.

14 Q. Okay. But, you do have products in your huge
14:36:18 15 inventory that sometimes weigh less than another product
16 but cost more, correct?

17 A. Yes.

18 Q. Okay. And let's just break it down even further.

19 If an order comes in for a product like
20 that that weighs less but costs more, the process through
21 which you take that order and fulfill that order is
22 basically the same, correct?

23 A. Could you repeat that, please?

24 Q. Sure. We can agree that in a situation where
14:36:55 25 Hodell is being asked to fulfill an order for a product

1 that weighs less than some others but costs more per
2 pound, the process through which you take the order, pick
3 the order off your shelf, package it up, and ship it out
4 to the customer is basically the same, right?

14:37:13 5 A. Correct.

6 Q. So we can agree that a particular worker being
7 asked to do a particular job might spend exactly the same
8 amount of time picking off the shelf a product that
9 weighs less but costs more than another, right?

14:37:35 10 A. That could be.

11 Q. Okay. So the -- let me show you another
12 demonstrative here. Maybe we can move through some of
13 this a little bit faster.

14 Sir, I can keep it here so you can see.

14:38:43 15 Sir, I know that you want to talk about net
16 sales, and we'll get to that. Here I have a chart that's
17 taken from your business records, your Exhibit 24, and
18 I'd like to go through that with you.

19 MR. STAR: Am I being heard okay? Should I
20 have a mic?

21 Q. Sir, we've taken here Hodell's annual gross sales.
22 The total number of full-time employees taken off of your
23 Exhibit 24, and we've simply divided those numbers to
24 come up with the gross sales per total population, what
14:39:24 25 you've called your full-time employees.

1 A. Um-hmm.

2 Q. Do you have Exhibit 24 there in front of you?

3 A. Yes, I do.

4 Q. Okay. Let's just confirm that these numbers are
14:39:35 5 accurate.

6 Is this working? Thanks.

7 So you see here we have annual gross sales,
8 you agree, 24.8 million in 2002?

9 A. Yes.

10 Q. And those numbers are accurate up through 2008,
11 right?

12 A. The gross sales numbers are correct.

13 Q. Okay. And so the highest gross sales we've already
14 established is 43.8 million in 2008 when you ran Business
14:40:57 15 One, yes? That's correct?

16 A. Correct.

17 Q. Now, let's look at your, what you've called your
18 Exhibit 24, "Total population," which is your full-time
19 employees, right?

20 A. Right.

21 Q. Okay. Let's just confirm we have those numbers
22 accurate. 137 people in 2002?

23 A. Correct.

24 Q. 138 in 2003?

14:41:21 25 A. Correct.

1 Q. 156 in 2004?

2 A. Correct.

3 Q. 162 in 2005?

4 A. Correct.

14:41:29 5 Q. And you jumped up to 177 in 2006?

6 A. Correct.

7 Q. And that was before Business One?

8 A. Correct.

9 Q. Then in 2007, you used FACTS for the first two
14:41:56 10 months and then in March, early March of '07 you switched
11 to Business One?

12 A. Correct.

13 Q. And you had 176 full-time employees in 2007?

14 A. Correct.

14:42:06 15 Q. So one less full-time employee in 2007 than in
16 2008 -- pardon me -- one less full-time employee in 2007
17 than in 2006, correct?

18 A. Correct.

19 Q. And then in 2008, you added one full-time employee
14:42:21 20 to come up again to 177, right?

21 A. Correct.

22 Q. And we've done a little math, and I'm happy to give
23 you a calculator if you'd like to confirm or check our
24 numbers, but we've simply divided your annual gross sales
14:42:36 25 by your total number of employees, and you'd agree with

1 me that the best year ever that you had for gross sales
2 per full-time employee was in 2008 when you ran Business
3 One for the full calendar year?

4 A. That's based on sales dollars; not pounds.

14:42:58 5 Q. We'll -- of course it's not based on pounds. We're
6 basing it on money.

9 A. Right, and so does the supplier of the product.

14:43:13 10 Q. Right. Everybody gets paid in dollars, not in
11 pounds, right?

12 A. Correct.

13 Q. Yes. So when we look at dollars, the things
14 everybody gets paid in, you had gross sales of \$247,893
15 per full-time employee in 2008. Do you see that?

16 A. You did the division.

17 Q. Okay. So you agree with this?

18 A. If you did the math correctly.

19 Q. Well, feel free to check it, but --

14:43:41 20 A. I don't have a calculator with me.

21 Q. We put one right up there for you. You can check
22 these numbers if you'd like.

23 A. Oh, I didn't see that. Sorry.

24 Okay. The '08 number is correct.

14:44:35 25 And I checked 2006. That number is also

1 correct, when you're looking at dollars.

2 Q. Okay. And we'd like to mark that as the next
3 Defendant's exhibit. Is that 910?

Sir, just sticking with that for a couple more questions, you can agree with me, sir, that when we look at the total dollars brought in the door by Hodell, which is represented through your annual gross sales, when you divide that by your total number of full-time employees, your best year for gross sales per full-time employee was 2008 when you ran Business One?

11 A. Correct.

12 Q. Okay. Let's go to another demonstrative and see if
13 you'll confirm that.

14 Sir, we've now taken the same gross sales
15 figures from your business records, and you had also
16 given us some information about not only your full-time
17 employees but with the additional temporary workers for
18 what you've called your total employees, and you can
19 confirm that these numbers are correct, right?

14:46:56 20 A. That total employee number including temps is
21 correct for the years.

22 Q. Very good. And so when we did the same basic math
23 and we divide annual gross sales, that's the money in the
24 door, by your total number of workers, your full-time
25 employees plus your temps, we again find that the highest

1 gross sales per employee happened in 2008 when you ran
2 Business One, right?

3 A. Based on that calculation, yes.

4 Q. All right.

14:47:26 5 And you can feel free to confirm these
6 numbers again, but you can check -- check them with your
7 calculator, but if you agree with them, we'll mark this
8 as the next exhibit, Defendant's 911.

9 A. I'll check two of them.

14:47:39 10 Q. Thank you.

11 A. Okay.

12 Q. Can we mark that one, put the next one up? Oh.

13 A. '06 and '08 are correct.

14 Q. You agree that that's correct?

A. '06 and '08 are correct.

16 Q. All right. We'll mark that as Defendant's 911,
17 please.

18 Joe, would you mind putting the next one
19 up?

14:49:56 20 Sir, the next chart that we've made here
21 again takes your gross sales figures, but this time off
22 of your business records takes your total hours worked
23 hourly, and if you go to your Exhibit 24, you can confirm
24 for me that these numbers represent the total number of
14:50:16 25 hours worked by Hodell's overall labor force for these

1 years, right?

2 A. No, that's not correct.

3 Q. That's not correct? That's not --

4 A. The temps are almost a hundred percent warehouse
14:50:27 5 employees.

6 Q. Okay. But all that you've actually given us in
7 this case so far as total hours worked comes off your
8 Exhibit 24, correct?

9 A. Correct. Those are direct full-time employees.

10 Q. Okay. So let's just make sure everybody
11 understands.

12 We don't have numbers from you as to the
13 total number of hours worked by temporary workers in any
14 of these years?

15 A. You have the equivalent number of full-time, which
16 is times 2080 hours per year.

17 Q. I don't understand what you're saying. Let's break
18 this down.

19 We've got your Exhibit 24, yes?

20 A. Yes.

21 Q. On there it has a line item for total hours worked
22 hourly, right?

23 A. Correct.

24 Q. And you've now told us that's just for your
14:51:12 25 full-time employees?

1 A. That is correct.

2 Q. All right. So at least we have those numbers
3 correct, right, 120,816 hours in 2002 is your total
4 full-time employee hours?

14:51:25 5 A. May I take a moment just to check?

6 Q. Please. Go right ahead.

7 A. Correct.

8 Q. Okay.

9 A. I'm sorry, I went through '07. I have one more.

14:52:29 10 | Correct.

11 Q. Okay. So we've correctly listed here the total
12 number of full-time hours worked from 2002 to 2008, yes?

13 A. Correct.

14 Q. Now, you said that this, these figures don't
14:52:40 15 include temporary worker hours that may have been put in
16 over any of these calendar years, but you can't point me
17 to a record that you've produced in this case that would
18 actually include that information, right?

19 A. I provided the equivalent full-time employees, and
14:52:58 20 that's 2080 hours a year for a full-time employee.

21 Q. I'm just asking you very simply, you've not given
22 us a record in this case of actual temporary worker hours
23 that were put in in any of these calendar years; yes or
24 no?

14:53:18 25 A. Not on Exhibit 24.

1 Q. Not just Exhibit 24. Not on any other document,
2 right?

3 A. I would then multiply that by 2080.

4 Q. We're splitting hairs here.

14:53:34 5 A. Okay.

6 Q. You can't show me a document right now that gives
7 me a total number of temporary worker hours put in,
8 actual hours put in in any of these eight calendar years,
9 can you?

14:53:44 10 A. That's correct.

11 Q. Okay. Thank you.

12 So going off the information that we do
13 have for actual hours worked, when we divide your annual
14 gross sales by your full-time hours worked, you'd agree
14:53:55 15 we'd find that by far 2008 was the best year with \$293 in
16 gross sales per employee hour worked, right?

17 You can check the numbers.

18 Bob, do you have the one up there?

19 A. Okay. The division is correct for '06 and '08.

14:54:54 20 Q. Okay. Let me just -- I just realized we had the
21 wrong exhibit up there for the jury. Let me just make
22 sure they see that.

23 Bob, can you put that up? It's the one,
24 the 293 on the bottom right. No.

14:55:32 25 All right. Not able to find it.

1 We'll -- you agree these numbers are
2 correct, right, sir?

3 A. For '06 and '08.

4 Q. You can check any of the years you'd like just to
14:55:43 5 confirm these numbers are correct.

6 Joe, do you mind holding this up for the
7 jury?

8 A. You want to tie everybody's time up for that?

9 Q. Pardon?

10 A. Do you want to tie everybody's time up for that?

11 Q. No.

12 A. No?

13 Q. If you're fine with that, then we won't.

14 Just because the jury hasn't seen this yet,
14:56:01 15 I'd like to just confirm --

16 THE JURORS: It came up.

17 MR. STAR: There we go. Murphy's Law.

18 We're going to mark this Exhibit 912.

19 BY MR. STAR:

20 Q. And very quickly, you agree that when you take your
21 total hours worked for full-time workers for all of these
22 years and you divide it by the total number of dollars
23 that came in the door, by far the best year you had was
24 2008 when you ran Business One for the full year?

25 A. That's the maximum number of gross sales per hour

1 worked. It's not by far the best year.

2 Q. Based on this metric, on this measurement, that's
3 all I'm asking you, sir, you can -- you can give other
4 testimony later. When you divide the total number of
5 dollars that came in the door by the total number of
6 full-time hours worked, by far the best year was 2008,
7 right?

A. In dollars per warehouse full-time hours worked.

9 Q. It's not just warehouse. This is all full-time
0 employees, right?

11 A. Pardon?

12 Q. This is -- this represents all full-time employee
13 hours, doesn't it?

14 A. In the warehouse.

14:57:27 15 Q. In the warehouse. So by far, your best year was
16 \$293 per hour worked in the warehouse in 2008?

17 A. In dollars.

18 o. In dollars?

19 A. Yes.

14:57:40 20 Q. The way people get paid, right?

21 A. Yes.

22 Q. Thank you. And let's just stick with this one for
23 a minute, by the way, because you say these are just
24 warehouse hours.

14:57:51 25 2006, your full-time employees put in

1 172,000 hours in the warehouse, right?

2 A. Correct.

3 Q. With gross sales of \$42.9 million, right?

4 A. Okay.

14:58:13 5 Q. Yes?

6 A. Yes.

7 Q. But in 2008, your workers put in 149,000 hours but
8 made nearly a million dollars more in gross sales, right?

9 A. That's sales dollars, yes.

14:58:35 10 Q. Sales dollars. And the difference between the
11 total hours worked in the warehouse in 2006, 172,000, and
12 worked in 2008, 149,000, that's over 22,000 less hours,
13 but you brought in nearly a million dollars more money,
14 right?

14:58:56 15 A. On -- on dollars, yes.

16 Q. On dollars. While you ran on Business One, right?

17 A. Um-hmm.

18 Q. While you ran Business One, right?

19 A. Correct.

14:59:39 20 Q. Last one, I promise.

21 Bob, now you can put up the one that you
22 had.

23 Sir, one final demonstrative. Instead of
24 taking your gross sales, we've now taken your gross
15:00:01 25 profits off of your Exhibit 24, and that's what you see

1 in that second column.

2 Can you confirm those numbers are accurate,
3 sir?

4 A. The annual gross profit number and the total
15:01:40 5 warehouse hourly worked for full-time employees is
6 correct.

7 Q. Very good. And when we do that same simple
8 calculation by dividing annual gross profit dollars by
9 the total hours worked, we find again that by far the
15:01:56 10 best year by that measure was 2008 when you ran Business
11 One, correct?

12 A. I didn't check those numbers, the division, but I
13 assume you did it correctly.

14 Q. Yes. And if you assume my math is correct and if
15 you compared 2008, the only full calendar year that you
16 ran Business One against 2006, the last full calendar
17 year you ran FACTS, you had a significant improvement in
18 the gross profit for total hours worked for your
19 full-time warehouse workers, correct?

15:02:31 20 A. Yes. I just want to make one comment.

21 You did not include the overtime hours in
22 any of these charts so far.

23 Q. Well, I've included your total hours worked?

24 A. That's regular hours, and then there's overtime
15:02:47 25 hours on this chart.

1 Q. Well, we'll go through that because -- well, we'll
2 get into that after -- probably now is the good time for
3 a break?

4 THE COURT: Okay.

15:02:55 5 MR. STAR: I'd like to mark this as
6 Defendants, what is it, 913? Okay.

7 THE COURT: Okay, folks, we'll take our 15
8 minutes this afternoon.

9 Keep in mind.

15:03:06 10 (Recess taken)

11 (Proceedings resumed in presence of the
12 jury as follows:)

13 THE COURT: You may be seated, folks,
14 please.

15 You may continue.

16 MR. STAR: Thank you, Your Honor.

17 BY MR. STAR:

18 Q. Mr. Reidl, I just want to stick on one point and
19 see if I can get something clarified.

15:24:05 20 When we were just looking at this
21 demonstrative with the total hours worked hourly, that
22 third column, the 120,816 at the top, I understood you to
23 say that that's just warehouse worker hours, full-time
24 warehouse worker hours for the year?

15:24:21 25 A. Yes. Straight time warehouse hours worked.

1 Q. So it didn't include other workers like yourself or
2 other executives; that's your testimony?

3 A. It didn't include the overtime hours and it didn't
4 include the temporaries.

15:24:36 5 Q. Okay.

6 A. For the warehouse.

7 Q. For the warehouse.

8 You testified earlier about the number of
9 pounds of product that Hodell was shipping per hour that
15:24:50 10 it worked over the course of the various years 2002
11 through 2008, right?

12 Do you remember speaking about that?

13 A. Yes. That's on the Schedule 24.

14 Q. Okay. I just want to make sure that we are doing
15 the same -- using the same math so when we look at this
16 later, we understand what you've done, okay?

17 Look at Exhibit 24 for me.

18 For the -- just use the first page as an
19 example, for the calendar year 2002 you came out with an
15:25:27 20 average pounds shipped per hour worked of 147.6, right?

21 A. Correct.

22 Q. And to do that, to get to that number, you took
23 your total pounds shipped, which is on the line above it,
24 17.8 million, right? That was the numerator?

15:25:55 25 A. Correct.

1 Q. And the denominator was your total hours worked --

2 A. Correct.

3 Q. -- of 120,816, correct?

4 A. Correct.

15:26:06 5 Q. So as I understand your testimony now, you're
6 saying that that is your -- the 147.6 is the average
7 pounds per shipped, per hour worked, just by your
8 full-time warehouse workers, is that what you're saying?

9 A. That is correct.

15:26:26 10 Q. And it didn't include, for instance, you?

11 A. That is correct.

12 Q. All right. Let's just make sure we've got this
13 clear. Maybe it's just a misunderstanding.

14 Go to Page 348 to 349 of your deposition.

15:26:43 15 I just want to see if I can refresh your recollection and
16 make sure that we're on the same page.

17 I'll show you where I am, if that's okay.

18 A. Yeah. 348?

19 Q. Right. If you'd start at Line 18 on Page 348 and
15:26:59 20 read through Line 15 of 349, just to refresh yourself.

21 A. Okay. How far should I read?

22 Q. Just halfway through 349.

23 Does that refresh your recollection that
24 when we talked about this topic before, the understanding
15:28:27 25 that you gave me was that the calculation for the average

1 pounds of product shipped per hour worked --

2 A. No. This doesn't say per hour worked.

3 Q. I'm sorry, I didn't finish.

4 A. Yeah. Okay.

15:28:40 5 Q. Let me just finish.

6 Does this refresh your recollection that
7 the calculation you did of pounds shipped per hour worked
8 actually included all of Hodell's employees, including
9 yourself and everybody else at the organization, and that
15:28:59 10 was the total hourly worked figure that you used in your
11 calculation, right?

12 A. Where do you see that?

13 Q. Well, let's go through it.

14 You see at the bottom of 348 we talked
15 about how you did your productivity calculation?

16 A. Okay.

17 Q. You said, going to Page 349, Line 7, you said, "I
18 looked at the pounds shipped in total and the number of
19 employees, and did a weighted average number of pounds
15:29:34 20 required per pound shipped under FACTS.

21 "Question: How many employees were
22 required per pound shipped in 2002 on average?"

23 You said, "About 131."

24 I asked you, "Did that include you?"

15:29:52 25 You said, "Absolutely."

1 "Question: So you're including everybody
2 at the time in the Hodell organization?

3 "Answer: Absolutely."

4 Do you see that?

15:30:00 5 A. Yes.

6 Q. So when you look at Exhibit 24, for instance, and
7 the information we have up there as total hours worked,
8 just so I understand, maybe we just had a
9 misunderstanding some years ago at your deposition, are
15:30:15 10 you telling me now that that figure, for instance the
11 120,816, does it actually include all full-time hours
12 including, for instance, yourself or is it simply limited
13 to the warehouse workers?

14 A. No, I stated it correctly in the deposition.

15:30:30 15 Q. So it includes everybody?

16 A. The pounds -- the hours are for warehouse hourly
17 people only.

18 My calculation was for all employees
19 against the pounds shipped. That's what I stated in the
20 deposition.

21 I didn't talk about hours worked. I talked
22 about the total number of employees.

23 Q. All right. Maybe we just don't see that the same
24 way, and I won't waste everybody else's time on it.

15:31:02 25 MR. STAR: Your Honor, may we quickly

1 approach on one issue?

2 THE COURT: Yes.

3 (Side-bar conference had off the record)

4 BY MR. STAR:

15:31:46 5 Q. Mr. Reidl, one more question about some of your
6 math calculations here.

7 You gave some testimony about what you call
8 the return on investment. Do you remember that?

9 A. Yes.

15:31:56 10 Q. And you were shown in Exhibit Number 38 -- I don't
11 know if you still have that perhaps in the white binder
12 in front of you.

13 And, Bob, if we can pull that up, it would
14 be great.

15:32:16 15 A. Okay.

16 Q. This was a document that you gave some testimony
17 about, and you said that this -- this gave you some
18 reason to believe that SAP had represented that you would
19 get a return on investment.

15:32:32 20 Do you remember that?

21 A. The channel partner represented that.

22 Q. Okay.

23 A. Based on what they had in their possession.

24 Q. So SAP didn't make a representation to you directly
15:32:43 25 about any particular return on investment that you would

1 receive, right?

2 A. He said you would get a very quick return on
3 investment.

4 Q. And nobody gave you a specific percentage return or
15:32:53 5 a timeline for return or an amount of return, correct?

6 A. No. But, if the experience is --

7 Q. That's all I asked --

8 A. Yeah.

9 Q. -- whether anybody gave you that.

15:33:05 10 We can agree, right, no one gave you any
11 particular numbers?

12 A. They said you would have a return on investment in
13 a number of months.

14 Q. Nobody gave you any particular number of months or
15:33:16 15 particular rate or particular amount of return, correct?

16 A. Nothing more specific than that.

17 Q. And you agree you signed a license agreement, your
18 son actually signed a license agreement with SAP at the
19 end of December, 2005, right?

15:33:31 20 A. That's when it was signed.

21 Q. And at no time prior to signing that license
22 agreement did you ever perform any calculation or explain
23 to anybody that you expected any particular rate of
24 return on your investment in this software, right?

15:33:52 25 A. When I'm told that it's going to be --

1 Q. Sir, yes or no? You never did a calculation like
2 that, did you?

3 A. I didn't need to do one if it was that fast.

4 Q. Okay. Thank you.

15:34:04 5 Let's move on to some other topics.

6 You were shown some marketing literature,
7 sir. Let's just go back to some of that.

8 Bob, can you pull up Exhibit 314?

9 Sir, this was one of the documents you were
15:34:47 10 shown by your counsel when you were testifying.

11 Do you remember that?

12 A. Yes.

13 Q. And you said this was something that you had seen
14 before you decided to move forward with Business One,
15:34:55 15 right?

16 A. Correct.

17 Q. Okay. We can agree on a couple things. This was
18 referring to the base Business One package, correct?

19 A. And it refers to -- I'd have to scroll up. On one
20 of the pages, it talks about ability to adapt.

21 Q. Sir, this didn't talk about any of the particular
22 custom software that Hodell eventually was going to build
23 and employ in its solution, correct?

24 A. It did not mention Radio Beacon or In-Flight.

15:35:33 25 Q. Okay. In fact, there's no SAP literature that you

1 ever received that mentioned anything at all about the
2 custom software that you ultimately were going to deploy,
3 base Business One plus custom In-Flight plus Radio
4 Beacon, right? That just didn't exist?

15:35:52 5 A. No specific document from SAP talked about those
6 two add-ons, but they talked about the easy adaptability
7 for add-ons through the DI API.

8 Q. Okay.

9 A. The Whitepaper in particular.

15:36:07 10 Q. All right. But none of that literature ever
11 mentioned In-Flight, and you understood that the
12 In-Flight project, this development of a custom software
13 add-on, was going to be at least an 18-month project even
14 from the start, right?

15:36:26 15 A. That is correct.

16 Q. All right. So let's just make sure we have this
17 clear as well. We covered it with your son when you were
18 here and you heard the testimony.

19 You agree that Hodell never just ran
20 Business One, the base package, you always ran Business
21 One plus In-Flight and Radio Beacon?

22 A. Business One by itself couldn't run a distribution
23 of fasteners.

24 Q. Right. And you knew that all along going back to
15:36:57 25 2003, 2004?

1 A. 2003, yes.

2 Q. Okay.

3 A. Yes.

4 Q. Thank you.

15:37:11 5 Let's talk about the conversations that you
6 gave some testimony on, conversations that had -- that
7 occurred back in 2003.

8 You gave some testimony about meeting with
9 Penelope Vitantonio from American Express. Do you recall
15:37:31 10 that?

11 A. Correct.

12 Q. Your testimony today was that during a
13 conversation, as I understood it, during a conversation
14 with Ms. Vitantonio and others, you received an assurance
15:37:46 15 that Business One would meet Hodell's specific needs for
16 300 or 500 users, is that your testimony?

17 A. 300 users, yes.

18 Q. Okay. And you're, just so we have this clear, you
19 believe that actually happened during a conversation with
15:38:04 20 Ms. Vitantonio?

21 A. That is correct.

22 Q. Okay. And Ms. Vitantonio at the time was with
23 American Express, right?

24 A. Correct.

15:38:12 25 Q. And she was promoting a product called the American

1 Express Edition of Business One?

2 A. Correct.

3 Q. Right. And you took notes, handwritten notes, of
4 your conversations with Ms. Vitantonio, right?

15:38:34 5 A. Correct.

6 Q. All right. Let's take a look at some of them.

7 You recall -- strike that.

8 Let's just try to pinpoint the time or date
9 when you believe you had these conversations where you
15:38:50 10 were told what you've testified to.

11 You said before that you believe that was
12 during a specific conversation on December 3rd of 2003,
13 right?

14 A. I believe I said on -- my notes indicated I talked
15 about scalability on 12/19/03.

16 Q. Can you --

17 A. There were a number of conversations but one of
18 the --

19 Q. Sorry. I don't mean to talk over you. I'm just
15:39:23 20 trying to move this along fast.

21 You have your deposition there. Just
22 refresh yourself, if you would. Can you go to Page 112?
23 It should be in the first volume, and I'll give you the
24 line.

15:39:35 25 A. I'm sorry, what page?

1 Q. 112. It's in the first volume.

2 A. Yeah.

3 Q. And just read from Page -- just read it to yourself
4 real quick from Page 112, Line 3.

15:40:52 5 (Pause)

6 Have you read that, sir?

7 A. Yes, I read it.

8 Q. Okay. Does that refresh your recollection that
9 your previous position had been that it was specifically
10 during a conversation on December 3rd, 2003, where you
11 believe you were told and given an expressed assurance
12 that Business One would be suitable for Hodell's specific
13 needs for 300 or 500 users?

14 A. That's what it says.

15 Q. Okay. Let's take a look at Exhibit 826, please.
16 And I'm happy to give you a hand -- pardon me -- I'm
17 happy to give you a paper copy of this, if you'd like.

18 Bob, if you can show Mr. Reidl, this is a
19 two-page document. Just show him both pages, please.

20 Sir, can you identify these notes?

21 A. Yes. They're my handwritten notes.

22 Q. Notes that you personally prepared during a
23 telephone call or meeting on December 3rd, 2003?

24 A. Yes.

25 Q. All right. Let's go to the first page of that.

1 Underneath the date, it has, "Penny
2 V./Mike."

3 Is that Penny Vitantonio?

4 A. Correct.

15:42:39 5 Q. Okay. So you had a meeting with Penny Vitantonio
6 and a gentleman named Mike on December 3rd, 2003, right?

7 A. Correct.

8 Q. All right. And just let's confirm your position,
9 your stance on things here.

15:42:52 10 What you've said before is that it was
11 during this meeting that you got a specific
12 representation that Business One could handle 300 or 500
13 users for you, right?

14 A. That's what the deposition says.

15:43:10 15 Q. Okay. Was that what you recall happening?

16 A. I don't see it in the notes here.

17 Q. Right. There's nothing in your notes that say
18 anything about anybody promising you anything, right?

19 A. I had conversation with them on our growth plans
20 at -- on several meetings, and specifically talked, one
21 place I did record it, on the 19th of December.

22 Q. And we're going to look at those notes just in a
23 minute.

24 I'm just going to walk you through these
25 and we'll have a chance to look at all of them, okay?

1 A. Okay.

2 Q. Your position has been that you were not willing to
3 proceed any further with any discussions about Business
4 One unless you had actually received a specific assurance
15:44:08 5 that Business One could handle 300 or 500 users for
6 Hodell specifically, right?

7 A. My statement was 300 users over a 10-year period.

8 Q. Okay. Go to Page -- and I just want to confirm
9 that you believe you were told that on this -- during
15:44:35 10 this meeting on December 3rd.

11 Go to Page 133 of your deposition, please.

12 A. Which page?

13 Q. 133. And I'll read from Line 15.

14 "Question: Do you believe that Hodell
15 relied in any way on this particular statement that we've
16 just been talking about here in the SAP Business One
17 Brief?"

18 Your answer: "We relied on the fact that
19 we were advised that the system would support 300 users
15:45:12 20 at the December 3rd, 2003 conference call meeting with
21 AmEx and IBIS."

22 Does that refresh your recollection that
23 you previously believe that you had been told during this
24 specific conversation on December 3rd, 2003, that you
15:45:28 25 could have 300 users?

1 A. That's what it says here.

2 Q. Okay. And just so we're clear, go to Page 139,
3 Line 6.

4 "Question," there's some background
15:45:49 5 information. Your answer, Line 9, "We were told at that
6 meeting 300 users, and when we started with 120 users the
7 system would not handle it.

8 "Question: Okay. You're referring to the
9 December 3rd, 2003 meeting?

15:46:02 10 "Answer: Correct."

11 So now you're refreshed, you have no doubt
12 that previously you believed this representation was made
13 on December 3rd, 2003?

14 A. Sir, you lost me. I don't know where you were
15 reading.

16 Q. Page 139, sir, Line 9.

17 A. Okay.

18 Q. All right. So am I to understand you to now be
19 saying today, three years after your deposition, that it
20 wasn't on December 3rd, 2003, but it was on -- it was
21 during a subsequent meeting where you received what you
22 think was a representation about 300 users?

23 A. No. I'm saying it -- here I say it occurred here,
24 but there was another time when scalability was talked
25 about, also.

1 Q. Okay.

2 So this jury understands, that's all I'm
3 trying to get to, you do contend that on -- that during
4 the December 3rd, 2003 meeting you were told 300 users;
15:47:36 5 that's your contention?

6 A. That's my contention in my deposition.

7 Q. Okay. And we can agree that your notes say nothing
8 about that at all, right?

9 A. Because that's such an important point, I don't
15:47:51 10 need to write that down when I'm told. That's an
11 assurance.

12 Q. So you're not in the habit of actually writing down
13 very important points, that's your testimony?

14 A. A single number like 300, I didn't need to.

15 Q. But your position has been that unless you got that
16 exact representation, you were done; you weren't going
17 forward with Business One at all, that's your position,
18 right?

19 A. That's correct.

20 Q. Okay. Now, you mentioned another meeting on
21 December 19th.

22 Let's look at your notes from that meeting,
23 sir.

24 It's 828, Bob. No, got the wrong number.
15:48:41 25 827, sorry.

1 And can you scroll those -- there's two
2 pages here, sir. I'd like you to see the whole thing.

3 Bob, can you scroll? There we go.

4 All right. Sir, these are your handwritten
15:49:21 5 notes from the December 19th, 2003 meeting with
6 Ms. Vitantonio, is that right?

7 A. Correct.

8 Q. We can blow it up so you can see it better or give
9 you a paper copy, but you agree with me, you didn't write
15:49:36 10 anywhere in here "300 users," right?

11 A. No, but that's --

12 Q. The word "Users" doesn't appear, right?

13 A. "The low-to-high range" pertained to the users.

14 Q. Sir, you didn't write down the word users or 300
15:49:51 15 users or anything like that, did you?

16 A. "Scalability" means number of users.

17 Q. So you wrote down "Scalability-volume plus
18 complexity," and it's your testimony right now that that
19 is a reference to 300 users? That's what you're pointing
15:50:08 20 to?

21 A. That's when it was discussed, when it was
22 discussed.

23 Q. Okay. But no numbers in this document, right, sir?

24 A. Correct.

15:50:17 25 Q. And, in fact, we could go through all your various

1 notes that you kept about your meetings with
2 Ms. Vitantonio and other people and we'd find first off
3 that you were a pretty prolific notetaker, right?

4 A. I take brief notes.

15:50:32 5 Q. Okay. You took notes of the meetings that you had
6 about Business One, correct?

7 A. Correct.

8 Q. And you wrote down things that were important to
9 you, right?

15:50:39 10 A. Correct.

11 Q. But nowhere in any of your notes ever did you write
12 down that anybody told you or promised you or said
13 anything about 300 users, correct?

14 A. At that point, I wouldn't need to continue if I
15 weren't told that.

16 Q. My question's different, and I think we have your
17 answer.

18 You never wrote it down anywhere, did you?

19 A. "Never" is the wrong word. I didn't write it on
20 these notes right here that we've looked at.

21 Q. Well, wait. Let's just get it clear for the jury.
22 We'll be here forever if we battle over these points.

23 You've been involved in this case since it
24 was filed in November of 2008, right?

15:51:24 25 A. Correct.

1 Q. Part of what you did in this case was to go back in
2 your own personal files and pull out everything that you
3 had, including all your notes that we're seeing here.
4 That's how we got them, right?

15:51:34 5 A. Correct.

6 Q. And you've been preparing to be here today, you've
7 been preparing for years to be here?

8 A. Correct.

9 Q. And you've gone back, of course, and looked through
10 all of your notes and everything that you have in this
11 case, right?

12 A. I assume so.

13 Q. Okay. And having done that, in preparing yourself
14 for years to be here, you're not able to tell this jury
15 or show this jury a single document, a note, an e-mail, a
16 memo, anything where you ever indicated -- you ever wrote
17 down that somebody told you 300 or somebody communicated
18 it to you in an e-mail, nothing like that actually
19 exists, does it?

20 A. I can only say on these notes right here.

21 Q. Okay. We'll take that answer.

22 Let's fast forward to the end of your
23 dealings with Ms. Vitantonio. Actually let me just
24 clarify something.

25 You were asked some questions about the

1 actual price and proposal that you got from American
2 Express, and then you were asked a question to the effect
3 of "Did you have any further discussions with American
4 Express after that proposal."

15:52:53 5 Do you remember that?

6 A. Could you repeat that question from the beginning?

7 Q. Sure. I'm just trying to set some background here
8 so we can move along.

9 A. Yes.

15:53:05 10 Q. Your counsel asked you some questions about the
11 price that you got from American Express. You said it
12 was 582,000?

13 A. That's my recollection.

14 Q. Okay. And we're going to see some notes. We'll go
15 through that.

16 You said to American Express you got to cut
17 the price in half, right?

18 A. I said the cost would have to be approximately
19 half.

15:53:22 20 Q. Okay. And then your counsel asked you, after that
21 event, right, you got the price from American Express and
22 told them no, your counsel asked you did you continue
23 having discussions with American Express, do you remember
24 that?

15:53:38 25 A. Yes.

1 Q. Okay. The answer that you gave, at least as I
2 heard you, was you started then mentioning dealings with
3 Mr. Van Leeuwen and you didn't actually mention anything
4 with American Express, but let's just be clear, after you
15:53:52 5 rejected American Express's proposal, that was the end of
6 your conversations with American Express and
7 Ms. Vitantonio, right?

8 A. In September, you said, or no?

9 Q. No, I didn't say September.

15:54:08 10 Maybe I'm speaking too quickly.

11 Let me -- let me try with some documents
12 and we'll see if we can't do it that way.

13 Exhibit 828, please. We'll move through
14 this, sir.

15:54:33 15 Okay. Sir, these are your handwritten
16 notes from a conference or a conversation you had with
17 Ms. Vitantonio, that's Penny, on February 2nd, 2004,
18 right?

19 A. Correct.

20 Q. Okay. And you indicate in your notes that the
21 price is going to be \$3,500 to \$3,750 per user, do you
22 see that?

23 A. Correct.

24 Q. And you're referring to the price per user for a
15:55:01 25 Business One license, correct?

1 A. Correct.

2 Q. Okay. And you can do the math with the calculator
3 there or trust me, because I've done it, if you'd
4 multiply 300 licenses by even the lower number, 3500, 300
15:55:20 5 licenses you'd agree would cost you \$1,050,000, correct?

6 A. That's the math that you used. I wasn't buying
7 that number of licenses at that time.

8 Q. Right. We're going to go through that.

9 And on top of the license price, the
15:55:41 10 upfront price for the licenses, you indicate 20% per year
11 of base fee in maintenance.

12 You understood that to mean that if you
13 spent, say, \$100,000 on licenses each year, you'd have
14 \$20,000 of maintenance on those licenses, correct?

15:55:58 15 A. That was my understanding.

16 Q. Okay. So if Hodell ultimately were to have
17 purchased a million dollars in licenses, every year on
18 top of that, you'd have a \$200,000 maintenance fee,
19 right?

20 A. That's what it would come out.

21 Q. Plus to do what you wanted to do, which was to add
22 on to Business One, you'd have to have consulting costs
23 plus development costs, right?

24 A. Correct.

15:56:28 25 Q. All right. Let's take a look at Exhibit 17,

1 please, Bob.

2 Sir, the last set of your notes we saw was
3 dated February 2nd where Ms. Vitantonio gave you the
4 price per user license, and now, sir, you'd agree what
15:56:56 5 we're looking at is a set of your handwritten notes from
6 February 6th of 2004, right?

7 A. Correct.

8 Q. And this is where Ms. Vitantonio gave you a price
9 quote for 582,000?

15:57:11 10 A. Correct.

11 Q. And let's just be clear, that 582,000 would include
12 some number of Business One licenses, right?

13 A. Correct.

14 Q. It would then include American Express's edition of
15 Business One, which was an add-on for distribution
16 companies, right?

17 A. But not for fastener distribution.

18 Q. I understand that. We're just trying to get this
19 straight away, sir. I'm not arguing everything with you.

15:57:36 20 It was base Business One plus American
21 Express's add-on product, right?

22 A. I don't recall specifically what add-on products
23 were involved here.

24 Q. That were going to be add-ons, though, we can agree
15:57:54 25 on that, yes?

1 A. Pardon?

2 Q. There were going to be add-ons with what
3 Ms. Vitantonio was proposing?

4 A. Correct.

15:58:00 5 Q. And it also included the consulting and
6 implementation services, right?

7 A. Correct.

8 Q. Okay. So just to be clear for everybody here, the
9 \$582,000, that wasn't just going towards the purchase of
15:58:16 10 Business One licenses at 3500 apiece; it was going toward
11 B1 plus add-ons plus services, right?

12 A. Partially. I think it was for 80 user licenses, as
13 I recall.

14 Q. Okay. We're dealing with very simple points here.
15 We can agree that the \$582,000 included some number of
16 Business One licenses plus other add-ons and plus
17 services, right?

18 It wasn't all going towards Business One
19 licenses, was it?

20 A. Correct.

21 Q. Thank you.

22 And you told her it was nice knowing her
23 but we can't afford this package, you'll have to shop
24 alternative software, and this is where you told her the
15:59:05 25 price would have to be chopped at least in half, right?

1 A. Correct.

2 Q. Your budget to do the entire project, Business One,
3 plus the add-ons, plus services, was not even over
4 \$300,000, right?

15:59:23 5 A. At that point, I was aware they did not have an
6 adequate add-on for our industry. That also added to
7 this decision.

8 Q. Okay. I simply asked you about your budget, sir.

9 You agree your budget did not even exceed
15:59:38 10 \$300,000, yes?

11 A. For the 80 user licenses.

12 Q. For the entire thing. We just went through this.
13 I mean we'll be here forever.

14 Ms. Vitantonio proposed to you a system
15:59:55 15 that had multiple components. It had Business One, it
16 had add-on products, it had services, right?

17 A JUROR: Sorry, that was my alarm.

18 THE COURT: Did you expect to be asleep?

19 (Laughter)

16:00:16 20 THE COURT: Sorry, Greg.

21 MR. STAR: No, that's okay. We needed a
22 break, I think.

23 Q. Let's just see if we can agree on a very basic
24 point. I'll try it again.

16:00:27 25 Ms. Vitantonio was proposing you a system

1 that had Business One licenses, plus add-ons, plus
2 services, and your budget for all of that kind of work,
3 the software, plus services, did not even exceed
4 \$300,000, we can agree on that, right?

16:00:46 5 A. It wasn't going to be 582,000 and it was also a
6 negotiating ploy.

7 Q. Okay. Fair enough.

8 Now, after this date, February 6th, 2004,
9 you didn't have any more conversations with
10 Ms. Vitantonio or American Express that you can recall,
11 correct?

12 A. At the moment, I don't have a -- there was
13 conversation with American Express and Dale Van Leeuwen
14 with American Express shunting over the work to Dale
15 Van Leeuwen, and I believe it happened after this.

16 Q. Okay. But I'm -- if you can show us a note, we'd
17 be happy to see it, but I've been through them all and
18 this was the last I've ever seen.

19 Are you aware of another conversation you
20 had with American Express after this date?

21 A. If it came in an e-mail, we supplied it.

22 Q. Okay. All right. Let's move on.

23 We already established that eventually you
24 signed a license agreement at the end of December, 2005,
25 right?

1 A. Correct.

2 Q. Okay. You agree that prior to signing the license
3 agreement in December, 2005, Hodell actually had found on
4 the Internet information that distinguished between the
16:02:17 5 number of employees and the number of users, right?

6 A. And I was mistaken.

7 Q. You were mistaken about that?

8 A. Correct.

9 Q. Okay. Go to Page 110 of your deposition. I'm at
16:03:03 10 Line 18.

11 There's some background and you give an
12 answer. "We had gone on the Internet and seen some
13 indication that the number of users was being -- the
14 limit on the number of users was declining. The number
16:03:17 15 of users.

16 "Question: When was this?

17 "Answer: Sometime during '05 or '04.

18 "Question: Prior to December 23rd of 2005?

19 "Answer: Correct."

16:03:31 20 Do you see that?

21 A. I didn't follow you, but it was on 112?

22 Q. I was at the bottom of Page 110.

23 A. 110.

24 Q. Line 18. Let's go on to Page 117, sir, Line 11.

16:04:00 25 Are you there?

1 A. Okay.

2 Q. "Question: Now, you said that prior to December
3 23rd, 2005, Hodell had gone on to the Internet and seen
4 information suggesting that the number of users
16:04:19 5 for -- possible on Business One had been decreased,
6 right?

7 "Answer: I believe so.

8 "Question: When did that happen and what
9 did you find?

16:04:27 10 "Answer: I would have to refresh my memory
11 from the documents. I would have to dig them out.

12 "Question: Fair to say, though, that prior
13 to signing the license agreement on December 23rd, 2005,
14 Hodell was aware that there was information publicly
16:04:45 15 available indicating that the number of users possible on
16 Business One might be less than 300?"

17 Your answer: "Yes."

18 Do you see that?

19 A. Yes. This pertains to the same error that I made
16:04:59 20 earlier.

21 Q. All right. Well, let's see if you made that error
22 again during your deposition.

23 A. Yeah.

24 Q. Page 120, Line 6. "Do you know if Hodell had found
16:05:15 25 the information that you referenced from the Internet

1 concerning the decreased number of users possible on
2 Business One before Hodell made the second \$60,000
3 payment under the development agreement?

4 "Answer: I don't know.

16:05:30 5 "Question: Do you know if Hodell had found
6 the information that you're referring to on the Internet
7 about the decreased number of users for Business One
8 before it made the third \$60,000 payment under the
9 development agreement?

16:05:44 10 "Answer: I believe so."

11 Are you telling us that you're changing all
12 that testimony today?

13 A. That was all surrounding the same question, and my
14 recollection at that time was in error.

16:06:01 15 We did not start looking for information
16 until we were seriously in trouble with lockups and we
17 needed to find out what the problem was.

18 Q. So you're changing all that testimony that we just
19 went through? You're telling us that three years ago,
20 you had that wrong, but now you have it right?

21 A. Because I checked with the person who helped do
22 this, sir.

23 Q. Sir, yes or no, you're changing your testimony, all
24 that testimony we just went through, you're just
16:06:37 25 reversing it?

1 A. My testimony says what it says.

2 Q. You were asked the question about whether anybody
3 had ever expressed any concern or information to you
4 about the number of SKUs that Hodell had.

16:06:50 5 Do you remember that?

6 A. Could you rephrase that question?

7 Q. Your counsel asked you some questions about whether
8 anybody ever told you about any concerns with the number
9 of SKUs Hodell had.

16:07:05 10 Do you remember being asked about that?

11 A. Yes.

12 Q. And you said no, no one told you anything.

13 Do you remember that?

14 A. I didn't hear that question correctly, sir.

16:07:21 15 Q. When your counsel asked you that question, you
16 answered, no, no one ever told you anything like that?

17 A. That's correct.

18 Q. Okay. Can we put up Exhibit 12, please?

19 Sir, these are your own personal
20 handwritten notes from October 31st of 2005?

21 A. Correct.

22 Q. That's two months before the license agreement is
23 signed with SAP?

24 A. Correct.

16:07:59 25 Q. And at the bottom, you had a web demo of Business

1 One at that time?

2 A. Pardon me?

3 Q. You had a web demo of Business One at that time?

4 A. That's what it says, yes.

16:08:11 5 Q. Okay. Down at the bottom you write in your own
6 hand, "Some little concern of server size for SQL
7 database greater than 120,000-plus SKUs?"

8 Do you see that?

9 A. Yes, I see that.

16:08:30 10 Q. And you wrote that yourself, right?

11 A. Correct.

12 Q. Thank you. Let's talk about the license agreement
13 very quickly.

14 A. It doesn't say what single --

16:08:42 15 Q. Sir, I don't have a question. Your attorney can
16 ask you that. I'm moving on to a different topic.

17 Let's talk about the license agreement very
18 quickly.

19 Everybody has seen it. Let's just confirm.

16:08:54 20 You personally read that license agreement stem-to-stern
21 before it was signed by your son at the end of December,
22 2005, right?

23 A. Correct.

24 Q. And you understood everything in that license
16:09:06 25 agreement, correct?

1 A. Correct.

2 Q. In fact, Hodell had experience signing license
3 agreements for its other software in the past, right?

4 A. Correct.

16:09:17 5 Q. FACTS had a license agreement? You had one with
6 Soft Tech, correct?

7 A. I believe so.

8 Q. Okay. And you were aware that the only way that
9 you can actually acquire the right to use software like
16:09:56 10 Business One is to execute a license agreement with the
11 software provider, correct?

12 A. Please restate that question.

13 Q. You had -- let's just step back again.
14 You personally had experience licensing
16:09:56 15 software prior to the December, 2005 license agreement
16 with SAP, right?

17 A. Correct.

18 Q. You had done that previously with FACTS?

19 A. Correct.

16:10:08 20 Q. Okay. And you understand, given your experience,
21 that in order for a customer like Hodell to actually
22 acquire licenses from a software provider like SAP, the
23 customer must sign a license agreement, correct?

24 A. That's what you're saying, right.

16:10:29 25 Q. I'm not asking you -- I'm asking -- it's not just

1 what I'm saying.

2 I'm asking you to confirm what you
3 understand, sir.

4 You understood that, right?

16:10:40 5 A. Correct.

6 Q. Thank you. And you understand that the only way
7 Hodell actually acquired the right to use any Business
8 One licenses was by signing the license agreement in
9 December of 2005, right?

16:10:55 10 A. We purchased 80 user licenses back in December of
11 '04, and we made a downpayment at that time.

12 We were not shown a license agreement at
13 that time.

14 Q. Right, because you didn't actually acquire any
16:11:17 15 licenses then, right?

16 A. Yes, we did.

17 Q. Okay, sir.

18 A. We committed ourselves to the purchase.

19 Q. Sir, look at Page 224 of your deposition.

16:11:30 20 A. 124?

21 Q. 224.

22 A. 224.

23 Q. Over three years ago I asked you: "Sir, you're
24 personally aware that the only way in which Hodell had
16:11:57 25 any right at all to use any SAP software was by signing

1 this license agreement with SAP America?"

2 Your attorney objected and then you said
3 the following: "I'm not an attorney but I suspect that
4 answer is correct."

16:12:13 5 You see that?

6 A. Yes.

7 Q. Okay. And you'll agree with me that despite your
8 testimony that you somehow purchased Business One in
9 2004, Hodell didn't actually get delivery of any Business
10 One software until after you signed the license agreement
11 at the end of December, 2005, right?

12 A. That is correct.

13 Q. Thank you. Your view of the license agreement when
14 you read this thing at the end of December of 2005, you
15 actually agonized over signing it, right?

16 A. I'm sorry?

17 Q. You actually agonized over signing the license
18 agreement, correct?

19 A. Correct.

20 Q. But you never got in touch with SAP directly, did
21 you?

22 A. No. We were dealing through the channel partner.

23 Q. And LSi/IBIS were the ones that handed you the
24 license agreement, correct?

25 A. That's my recollection.

1 Q. And you never even expressed any concern to LSi or
2 IBIS about the license agreement, did you?

3 A. I directly, no. I'm not certain if my son did
4 but --

16:13:36 5 Q. Thank you. Stick with what you know, okay?

6 I won't go through all the details,
7 everybody's seen it before, but very quickly, we can
8 agree that when LSi/IBIS handed you the license
9 agreement, it included what we've all seen before as
16:13:54 10 Article 4.1 concerning the relationship between SAP and
11 IBIS/LSi, right?

12 Sir?

13 A. Yes.

14 Q. That was in the contract when it was shown to you
16:14:15 15 by LSi/IBIS, right?

16 A. That appears to be correct.

17 Q. Okay. You've contended in this case that IBIS/LSi
18 was acting as SAP's agents and you were led to believe,
19 in your view, that IBIS/LSi was SAP's agent?

16:14:33 20 That's your contention, right?

21 A. That's my understanding of the channel partner
22 agreement.

23 Q. Okay. The channel partner agreement, you say?

24 A. Correct.

16:14:43 25 Q. Okay.

1 A. LSi's --

2 Q. Let's just be clear.

3 You previously testified that you had never
4 seen the so-called channel partner agreement?

16:14:53 5 A. But we were told that they were --

6 Q. Sir, sir, you never saw the channel partner
7 agreement, did you?

8 A. Not until discovery.

9 Q. Not until this litigation.

16:15:02 10 So at all the times before you bought the
11 software from SAP, you'd never seen that document that
12 you're referring to now, right?

13 A. That is correct.

14 Q. Okay. So just so we are playing on an even field,
16:15:15 15 I'd ask you to keep your testimony here limited to the
16 personal knowledge that you had at the time and not about
17 things that you've learned afterwards.

18 Is that fair?

19 A. Correct.

20 Q. Thank you.

21 And so let's just be clear: When LSi
22 presented you with the license agreement, they presented
23 you with a document that said "Licensee," that's Hodell,
24 "Acknowledges and agrees that the SAP reseller," we can
16:15:42 25 agree that's IBIS/LSi, yes?

1 A. Okay.

2 Q. "Through which licensee, Hodell, has arranged for
3 the procurement of this agreement, or from which
4 licensee, Hodell, receives any services related to the
16:15:56 5 software is not the agent of SAP."

6 Right?

7 A. That is what it says.

8 Q. And LSi/IBIS, the company that you're now
9 contending was SAP's agent, they were the ones that
16:16:09 10 handed you this document saying they're not SAP's agent,
11 correct?

12 A. That's what it says.

13 Q. And it went on. It said, "The SAP reseller,"
14 that's IBIS/LSi, "is an independent company, person, or
16:16:23 15 entity with no authority to bind SAP or make
16 representations or warranties."

17 Do you see that?

18 A. Correct.

19 Q. That was also in the document IBIS/LSi handed you,
16:16:33 20 and then you signed, right?

21 A. Correct.

22 Q. One of the reasons that I understand you've
23 contended that you believe IBIS/LSi was somehow SAP's
24 agent is through the use of the word "Partner," right?

16:16:55 25 A. Channel partner.

1 Q. Channel partner, okay.

2 A. Which the marketing documents say they were -- the
3 product was sold exclusively through the channel partner.

4 Q. Fine. You can argue that later.

16:17:06 5 I'm asking for your understanding.

6 Sir, Hodell itself uses that word "Partner"
7 on its own website to describe other companies, right?

8 A. I believe so.

9 Q. All right. Let's take a look so the jury
16:17:21 10 understands.

11 Go to Exhibit 4, please.

12 You have to blow that up, Bob. It's hard
13 to read.

14 Go to -- go to the fourth page of this,
16:17:42 15 please.

16 Sir, you agree with me this is a printout
17 from your own website that was taken back in February
18 of -- February of 2012, yes?

19 A. I don't know exactly when it was taken, but it's
16:18:01 20 from our website.

21 Q. It's from your website, good enough.

22 And there on your own website you have
23 companies that you describe and advertise to the world as
24 manufacturing partner, right?

16:18:13 25 A. Correct.

1 Q. And you go on to say that "Each partner has been
2 carefully chosen for their uncompromising quality
3 products, their competitive pricing," and so on and so
4 on, right?

16:18:26 5 A. Correct.

6 Q. So "Partner" is a term that you yourself use to
7 describe other companies that you have a nonlegal
8 relationship with, correct? Correct?

9 A. Correct and --

16:18:39 10 Q. Thank you.

11 A. -- they provide us certifications of the products.

12 Q. All I asked was for you to confirm --

13 A. Yeah.

14 Q. -- my question. Okay?

16:18:52 15 Let's talk about Dale Van Leeuwen a little
16 bit.

17 You were here for Mr. Van Leeuwen's
18 testimony yesterday?

19 A. Correct.

20 Q. You have seen and heard the testimony about the
21 letters, you were asked about those earlier today, the
22 letters that you and your son had been sending to
23 Mr. Van Leeuwen from 2001 up through July of 2003 where
24 there were threats of litigation and so on.

25 Do you remember those documents?

1 A. Yes, I do.

2 Q. Okay. Let's just pull one of them up.

3 Bob, pull up 312, please. We'll go through
4 that quickly.

16:19:39 5 Mr. Van Leeuwen testified yesterday to the
6 effect that he didn't really believe your threats were
7 directed at him, but you and I can agree your threats
8 were definitely directed at Mr. Van Leeuwen and IBIS,
9 right?

16:19:55 10 A. You were speaking too rapidly, sir.

11 Q. I have a habit of that.

12 Mr. Van Leeuwen testified yesterday to the
13 effect that he did not believe that your threats of
14 litigation back in 2001 and 2003 were actually directed
16:20:13 15 at him.

16 Do you remember that?

17 A. That's what I believe he said.

18 Q. Okay. But you and I can agree that there's no
19 doubt you were directing your threats at Mr. Van Leeuwen
16:20:22 20 and IBIS, right?

21 A. That's what the letter says.

22 Q. Okay. You were actually threatening to sue
23 Van Leeuwen and IBIS back in '03, yes? Is that right?

24 A. That was a strategy to get them going on correcting
16:20:43 25 the problem.

1 We never filed a suit. This is the first
2 one we've ever filed in 34 years.

3 Q. So you're just saying, hey, you write letters to
4 people making exaggerated claims and threatening lawsuits
16:20:57 5 when you're not serious, is that what you're saying?

6 MS. LUARDE: Objection.

7 THE COURT: Overruled.

8 A. You're calling it an exaggeration.

9 Q. Well, let's make sure we all understand.

16:21:10 10 Let's just break it down.

11 When your attorneys asked you questions
12 about these documents today, you said you believe
13 Mr. Van Leeuwen never once lied to you; that was your
14 testimony earlier today, right?

16:21:25 15 A. That's my recollection.

16 Q. All right. Look at Exhibit 312. That's your own
17 e-mail to Dale Van Leeuwen copying your son Kevin July
18 24th, 2003, right?

19 A. Correct.

16:21:43 20 Q. And you're writing only to Dale; nobody else,
21 right? It says, "Dale," do you see that?

22 A. To Dale and a copy to Kevin.

23 Q. A copy to Kevin, but you're directing this to Dale,
24 right? We can agree on that?

16:22:05 25 A. Yes.

1 Q. And look at what you write, second paragraph, "I am
2 personally convinced that the eWMS was promoted well
3 beyond its capabilities."

4 We can agree you're telling him he has
16:22:16 5 promoted software beyond its capabilities, he's
6 misrepresented the capabilities of software. That's what
7 you're telling him, right?

8 A. Yeah, this represents Radio Beacon and Aperum.

9 Q. Which was software that you acquired through
16:22:29 10 Mr. Van Leeuwen, right? He was working on that with you?

11 A. Correct, but it's not -- it doesn't say that he
12 necessarily represented it.

13 I have no reason to believe that he did.

14 Q. But you were threatening him with a suit, weren't
16:22:43 15 you?

16 A. To get some action.

17 Q. I see. And you say you never actually sued
18 Van Leeuwen over what you were writing about in these
19 e-mails, right?

20 A. We've never sued anybody other than --

21 Q. But you actually got restitution from Van Leeuwen,
22 didn't you?

23 A. Explain that again.

24 Q. You actually received restitution from Dale
16:23:13 25 Van Leeuwen; that's why you didn't sue him, correct?

1 A. No. That's not -- he took action to start
2 correcting the problem.

3 It took quite awhile, but he worked on it
4 and things improved by '06 --

16:23:31 5 Q. Could you put up Exhibit 10, Bob? Sir, Exhibit 10
6 is an e-mail that you received and you put your own
7 handwritten notes on the bottom, correct?

8 A. Top or bottom?

9 Q. Pardon?

16:23:53 10 A. On the bottom.

11 Q. On the bottom. Those are your notes, right, sir?

12 A. Correct.

13 Q. And you write here, "The In-Flight pass was IBIS's
14 restitution for our implementation penalty of Radio
16:24:05 15 Beacon."

16 We can agree you eventually got restitution
17 from Van Leeuwen, right?

18 A. That is to help us recover some of the
19 implementation losses we suffered.

16:24:25 20 Q. From the prior implementation, the one you were
21 writing to him about in your letter, your e-mail on July
22 24th, 2003, that's Exhibit 312, right?

23 A. Right. That's -- that's my impression. Okay?

24 Q. Well, let's just be clear.

16:24:41 25 You never told SAP about any of these

1 disputes you were having with Van Leeuwen and IBIS, did
2 you?

3 A. I'm sorry?

4 Q. You never told SAP about any of these disputes you
16:24:56 5 had -- you had been having with Mr. Van Leeuwen and IBIS,
6 did you?

7 A. I never talked to SAP until after implementation.

8 Q. Right. And in your personal view, you and the
9 others at Hodell, you simply had no obligation or duty in
16:25:18 10 your mind to disclose to SAP anything at all about this
11 prior dispute with Mr. Van Leeuwen and IBIS, correct?

12 A. That was between us and LSi and Radio Beacon.

13 Q. So you felt like you'd never need to tell SAP a
14 thing about it, right?

16:25:40 15 A. They didn't have anything to do with this.

16 Q. Right. So they, in your view, had no right to know
17 it; you had no obligation to tell them, right?

18 A. That's correct.

19 Q. Yet, what we just saw on Exhibit 10 was that in
20 connection with your next project where you were going to
21 use SAP's Business One software as your base platform and
22 build In-Flight, you were actually getting restitution
23 from Van Leeuwen from that prior dispute; yet you still
24 never told SAP anything about it, did you?

16:26:18 25 A. Pardon?

1 Q. Yet you still never told SAP anything about it, did
2 you?

3 A. It didn't concern them.

4 Q. Right. They just didn't have any right to know in
16:26:29 5 your view, right?

6 A. I didn't talk to them until after we were starting.

7 Q. Right. Because you had no relationship at all with
8 SAP, did you?

9 A. I had relationship through LSi, the channel
16:26:44 10 partner.

11 Q. You had no relationship with SAP directly, did you,
12 sir?

13 A. We purchased 80 user licenses.

14 Q. Just through a contract and you never talked to
16:26:56 15 anybody, right?

16 A. Pardon?

17 Q. Through a contract that you signed, without ever
18 talking with anybody at SAP, right?

19 A. That is correct.

20 Q. And you believe you had nothing akin to any kind of
21 special relationship or you had any kind of trust or
22 confidence between yourself and SAP, right?

23 A. I -- I don't understand that question.

24 Q. You don't believe you had any kind of special
16:27:24 25 relationship with SAP, right?

1 A. I'm not certain what you mean by that.

2 Q. Well, we went through this at your deposition
3 before.

4 Remember testifying at your deposition that
16:27:37 5 you didn't -- that you believed you merely had a
6 business-to-business or arm's length relationship with
7 SAP?

8 Do you remember that?

9 A. Can we read that?

10 Q. Sure.

11 A. Where was that?

12 Q. Sir, Page 236 of your deposition. It's at the end
13 of the first volume.

14 A. 236, sir?

15 Q. Yes, sir.

16 A. Okay.

17 Q. On Line 8, I asked you back in February of 2012,
18 the following: "At the time that you signed the license
19 agreement in December of 2005, did Hodell believe that it
20 had any special relationship with SAP America or SAP AG,
21 such that it was in a position of trust or confidence
22 with SAP?"

23 Your attorney objected. Then you answered:
24 "I don't believe it was a special relationship. I
16:29:28 25 believe a company of SAP's stature requires an up and up

1 relationship with all their clients.

2 "Question: So you'd agree that when you
3 signed the license agreement, you had nothing more than a
4 business-to-business or arm's length relationship between
16:29:43 5 Hodell and SAP, correct?

6 "Answer: Correct."

7 That testimony you stand by today, don't
8 you, sir?

9 A. That's what it says.

10 Q. And you stand by that testimony right now, don't
11 you?

12 A. I don't know how to interpret that question.

13 Q. Do you stand by your testimony from 2012 or not?

14 A. I believe that there should be trust between --

16:30:19 15 Q. Sir, that's not the question.

16 It calls for a yes or no.

17 Do you stand by your testimony as to what
18 you believed the relationship to be, or are you changing
19 that testimony, yes or no?

20 A. I don't know how to answer that question.

21 Q. Okay. We'll move on?

22 MR. STAR: Oh, I see the time.

23 THE COURT: Is this a good time? You have
24 a lot more?

16:30:48 25 MR. STAR: No. I'll finish up pretty

1 quickly tomorrow, unless you want me to go for another 15
2 minutes right now, I can probably get it done.

3 THE COURT: Well, we still have redirect so
4 what we'll probably do is break for the evening.

16:31:01 5 We made that promise to you 4:30. So we'll
6 resume tomorrow morning 8:15, Mr. Panigutti, same place?

7 Sounds good.

8 Keep in mind the admonition. Have a good
9 night.

16:31:14 10 (Jury out)

11 (Proceedings adjourned at 4:31 p.m.)

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1 C E R T I F I C A T E

2 I certify that the foregoing is a correct
3 transcript from the record of proceedings in the
4 above-entitled matter.

5

6

7

8 **/s/Susan Trischan**

9 /S/ Susan Trischan, Official Court Reporter
10 Certified Realtime Reporter

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